



REPUBLIC OF KENYA
IN THE POLITICAL PARTIES DISPUTES TRIBUNAL AT NAIROBI
COMPLAINT NO. 289 OF 2017

MARGARET WANJIRA MWAGO.....APPLICANT
VERSUS
JUBILEE PARTY.....1ST RESPONDENT
INDEPENDENT ELECTIONS AND
BOUNDARIES COMMISSION.....2ND RESPONDENT
DANIEL M. NGUGI.....3RD RESPONDENT

JUDGMENT

Introduction

1. The Claimant participated in the 2nd Respondent’s nominations for Member of County Assembly, Kiuu Ward, Ruiru Constituency in Kiambu County. She contested the 1st Respondent’s nominations held on 25th April, 2017 which she claims were marred with irregularities. She is dissatisfied with the outcome of the process and seeks appropriate relief from this Tribunal.

Claimant's Case

2. The Claimant specifically challenges the results from Stream 2 Githurai Kimbo whose figures were altered. She alleges that voting and initial tallying by the Presiding Officers went on smoothly up to the point of declaration of results. The problem arose when the Returning Officer announced the results of the election. The results for Stream 2 Githurai Kimbo had been altered.
3. According to the Stream 2 results that had been read by the presiding officers and signed by all agents, she had garnered 130 votes over the 3rd Respondent

who had garnered 95 votes. The results declared by the Returning Officer however indicated that the 3rd Respondent had garnered 160 votes instead of 95 votes.

4. The Claimant filed Appeal Number 22 of 2017 seeking a recount on the grounds that the votes for Stream 2 Githurai Kimbo had been inflated to favour the 3rd Respondent. Instead, the Jubilee Appeals Tribunal erred by relying on the contested results in Form 4(B)(ii), instead of the requisite Form 3(e). It did not issue any certificate and instead ordered further investigations into the matter. The tribunal thus left the dispute unresolved.
5. The Claimant seeks a re-tally of the results declared in Form 4(B)(ii) based on the signed **Form 3(e)** contained in ballot box serial number **007687**.
6. If this does not happen, she apprehends that the 1st Respondent could forward, if it hasn't, to the 2nd Respondent a nominee without considering the right of the electorate in Kiuu Ward to choose a candidate.

1st Respondent's Case

7. The 1st Respondent did not file any documents in this matter.

3rd Respondent's Case

8. The 3rd Respondent avers that the Complainant has not proved through the evidence provided in the bundle of the complaint any widespread irregularity and how that altered the results. There is no proof of the alleged fraud at all of the alterations in Githurai Kimbo Stream 2. He submits that the burden of proof is on the person who alleges.
9. He also impugns the authenticity of the documents relied upon. The 3rd Respondent further submits that it is proper to leave the tribunal's decision undisturbed.

Respondents' Case

10. Marykaren Kigen-Sorobit swore a Replying Affidavit in response to the complaint. She averred that the complaint was dead on arrival as the 1st Respondent had already submitted the name of its candidate to the IEBC.
11. She also contended that the complaint had been made in bad faith and lacked merit. It was an afterthought geared toward discrediting the 1st Respondents processes, structures and systems. According to her, the Respondent's Jubilee Party Appeal's Tribunal had dismissed the Complainant's complaint through a ruling delivered on 8th May, 2017. In turn, the 3rd Respondent had been confirmed as the winner based on the evidence on record. The Complainant's allegations were confirmed as false. Litigation must come to an end. The Complainant has failed to discharge the burden of proof.

Analysis

12. The 1st Respondent had an obligation to ensure that the voting system employed for the Kiuu Ward primaries was simple, accurate, verifiable, secure, accountable and transparent. What emerges in this Complaint is that the 1st Respondent did not conclusively deal with the Complainant's queries concerning the results from Githurai Kimbo Primary polling station. The ruling dated 8th May, 2017 confirms that the Jubilee Appeals Tribunal erred by relying on the contested results in Form 4(B)(ii), instead of the requisite Form 3(e) which was the primary document.
13. Further, the affidavit evidence of the meeting of 15th May, 2017 between the parties herein and the 1st Respondent's Secretary General was not controverted.

14. In *William Maina Kamanda v Margaret Wanjiru Kariuki [2008] eKLR* it was held that:

It is now well established that an order of scrutiny can be made at any stage of the hearing before final judgment whether on the court's own motion or if a basis laid requires so. It can be made... there is ground for believing that there were irregularities in the election process or if there was a mistake or mistakes on the part of the Returning Officer or other election officials

15. It is the duty of this Tribunal to give effect to the will of party members as expressed in party primaries.

16. We hold that the proper thing to do in the circumstances of this case would have been to scrutinize Form 3(e) in respect of Stream 2 at Githurai Kimbo Primary School polling station.

Reliefs

17. In *Complaint No 40 John Mruttu v Thomas Ludindi Mwacheghu & 2 others*, we held that in every matter over which we have jurisdiction, this Tribunal can grant any order that is just and equitable in accordance with section 11(1) of the Fair Administrative Action Act, 2015. The proper discharge of this Tribunal's mandate requires it to grant effective remedies, which means the most appropriate remedy in the circumstances of the case.

18. Accordingly, the justice of this case requires us to make the following orders:

(a) A declaration be and is hereby issued that the nomination certificate issued to the 3rd Respondent is null and void and of no effect in law.

(b) An order be and is hereby directing the 2nd Respondent to scrutinize Form 3(e) and conduct a recount of the votes from Githurai Kimbo Primary

School polling station Stream 2, contained in ballot box serial number 007687, in the presence of all parties or their agents, and to use the result to determine the winner of the nomination for Member of County Assembly, Kiuu Ward, Ruiru Constituency, Kiambu County, within 24 hours from the pronouncement of this judgment.

(c) The 1st Respondent shall bear the Claimant's costs of this complaint.

DATED and DELIVERED at Nairobi this 25th day of May 2017

Kyalo Mbobu

Chairperson

James Atema

Member

Hassan Abdi

Member