



REPUBLIC OF KENYA
IN THE POLITICAL PARTIES DISPUTES TRIBUNAL AT NAIROBI
COMPLAINT NO. 291 OF 2017

DAVID LETING KIMELI CLAIMANT

VERSUS

JUBILEE PARTY OF KENYA RESPONDENT

JUDGMENT

Summary of the case

1. This Complaint relates to the Respondent's nominations for Member of the County Assembly, Kipkenyo Ward, Kapsaret Constituency, Uasin Gishu County conducted on 24 April 2017. The Claimant was among the eleven (11) contestants for the said seat. He was declared winner with a total of 1353 votes with the closest competitor garnering 1295 votes. Despite that win, it is the Complainant's case that he has unsuccessfully tried to obtain the nomination certificate from the Respondent's headquarters. He avers that no complaint has ever been filed in respect of the said nominations exercise either at the Tribunal or at this Tribunal.

2. He seeks the following orders:

- (a) A declaration that he is the duly nominated candidate for Member of the County Assembly, Kipkenyo Ward, Kapsaret Constituency, Uasin Gishu County; and*
- (b) An order that the Respondent issue him with the nomination certificate.*

Submissions

3. In his submissions filed on 25th May 2017, he reiterates that he won with 1353 votes, a victory confirmed by both the Returning and Presiding Officers, officials of the Respondent. That he was issued with Form 3(e) and the Declaration Form. He urges that when he travelled to the Party's headquarters for the nomination certificate, the same was not granted. It is submitted that the Respondent has issued a nomination certificate to Hillary Rono, whose name the Respondent has also included on the party list submitted to the Independent Electoral and Boundaries Commission (IEBC). That the list was published on 20th May 2017, but it is an interim one and not the final one.
4. The Respondent filed a Reply to the Complaint on 25th May 2017 deposed by its Deputy Executive Director, Legal and Compliance, Marykaren Kigen. She submits that the contents of the Complaint and the Supporting Affidavit are summarily denied and the Complaint put to strict proof thereof. That the Complaint is a non-starter as the Respondent has already submitted names of candidates to IEBC, save for the names of parties and the electoral locations that were before this Honorable Tribunal prior to 10th May 2017.
5. Lastly, the Respondent contends that the Complainant has not exhausted IDRM and cites the High Court case of *Hon. Rachel Nyamai vs Jubilee Party of Kenya, Election Petition Appeal No. 58 of 2017*.

Determination

6. The Complainant's case is that he won the nomination primaries for Member of County Assembly, Kipkenyo Ward, Kapseret Constituency and that he was duly

issued with a provisional certificate but unfortunately, he has not been issued with the final nomination certificate. Further the name of Hillary Rono is the one that has been included on the Party list while it is the complainant who was declared winner by the Returning Officer.

7. We have perused the record before us. The Complainant has produced a tallying sheet and Forms 3(e) duly signed by the Presiding Officers from the various polling stations. From that evidential material, it is evident that the Complainant won by 1353 votes. This evidence is not rebutted. While the Respondent has filed a Reply to the Complaint, it does not even comment on these results as produced. Secondly, while the Complainant has produced these documents made by the Respondent's officers, the Respondent has chosen not to comment on them. As such we find the Complainant's evidence that he won the nominations exercise unshaken and credible.
8. While the Respondent submits that the Complainant be put to strict proof of his allegations, it is the Respondent that fails in discharging its burden of proof. While the Complainant has made a prima facie case, the Respondent has completely failed to rebut it. We also find the Respondent's submission that it has already submitted the Party list to IEBC to be derogatory and mal-fide. Why would the Respondent submit the wrong name to the IEBC with the full knowledge that it is the Complainant who won? This Tribunal finds that even if the name of Hillary Rono has been already forwarded, the interests of justice dictates that that wrong cannot be left to stand but should be rectified.
9. Lastly while the Respondent cites the High Court case of *Hon. Rachael Nyamai v Jubilee Party of Kenya & another*, in urging that we have no jurisdiction since IDRM has not been exhausted, the Respondent does not address itself to other High Court decisions such *Election Petition Appeal No. 5 of 2017, Joseph Mboya Nyamuthe vs The Orange Democratic Movement & Another* and *Election Petition Appeal No. 4*

Eric Kyalo Mutua v Wiper Democratic Movement, Kenya & another, in which the same High Court has held that IDRMM is not mandatory. Consequently, with such a divided jurisprudence, this Tribunal finds the Respondent's submissions on the issue moot and outside the mandate of this Tribunal to resolve.

10. The upshot of the foregoing is that we make the following orders:

- (i) *The Memorandum of claim herein is allowed.*
- (ii) *The Complainant, David Kimeli Leting, is hereby declared the duly nominated Jubilee Party candidate for Member of County Assembly, Kipkenyo Ward, Kapseret Constituency, Uasin Gishu County.*
- (iii) *The Respondent, Jubilee Party, is hereby ordered to issue a Nomination Certificate to the Complainant, David Kimeli Leting, as the duly nominated Jubilee Party candidate for Member of County Assembly, Kipkenyo Ward, Kapseret Constituency, Uasin Gishu County.*
- (iv) *The Nomination Certificate issued to Hillary Rono by the Respondent as the nominated Jubilee Party candidate for Member of County Assembly, Kipkenyo Ward, Kapseret Constituency, Uasin Gishu County is hereby revoked.*
- (v) *In the interests of party unity each party shall bear its own costs.*

11. Orders accordingly.

DATED and DELIVERED AT NAIROBI thisDAY OF MAY 2017

Kyalo Mboju

Chairman

James Atema

Member

Hassan Abdi

Member