



REPUBLIC OF KENYA
THE POLITICAL PARTIES DISPUTES TRIBUNAL
COMPLAINT NO. 55 OF 2017

JACKLINE ATIENO ONGORO.....COMPLAINANT

-VERSUS-

ORANGE DEMOCRATIC MOVEMENT PARTY.....1ST RESPONDENT

BASSIL OTIENO ODERO.....2ND RESPONDENT

JUDGMENT

Summary of the Complaint

1. This is a complaint arising out the nomination exercise by the 1st Respondent that was held on 24/4/2017 for the position of Member of County Assembly, Kanyasa Ward, Nyatike Constituency, Migori County. The Complainant was a contestant alongside the 2nd Respondent. She avers that she had a clear win in 12 out of the 18 polling stations. The Returning Officer declared her as holding position 2 with 1,361 votes against two other male aspirants and in particular the 2nd Respondent herein who allegedly garnered 1,378 votes.

2. The Complainant contested the nomination results at the **ODM** Migori County Elections Appeals Tribunal (hereinafter IDRМ) raising certain instances of irregularities and violence more targeting the Complainant and largely allegedly occasioned by the 2nd Respondent against the Complainant. The said IDRМ found that the 2nd Respondent had indeed conspired with persons not party members to defeat the Complainant. As such the provisional certificate issued to the 2nd Respondent was cancelled and/or withdrawn and the said IDRМ directed that the Complainant be issued with the final nomination certificate as its nominee for **MCA**, Kanyasa Ward.
3. The decision of the said IDRМ was reconsidered by the 1st Respondent's special County Appeals Tribunal which proceeded to summon the Complainant. The Complainant appeared at the said Special County Appeals Tribunal which by its decision delivered on 6th May 2017, ordered that the certificate be issued to the Complainant while the final certificate issued to the 2nd Respondent to be revoked. The Complaint is supported by an Affidavit & Supplementary Affidavit dated 12/5/2017. The Complainant also filed written submissions.
4. The Respondent did not appear or participate in the proceedings before the Tribunal. An affidavit of service was filed by Patrick Akhenda on 13th May 2017 in which he depones that he duly effected service on both Respondents.

Issues for determination

5. From the Amended Complaint filed on 13th May 2017 the issue for determination is whether the 1st Respondent should be compelled to issue the Complainant with the final nomination certificate.

Analysis

6. We have perused the pleadings and evidence adduced by the Complainant. The allegations that the nomination process was marred with irregularities seem to have been found plausible by the IDRM process. The said IDRM process upon inquiries also found that most of the irregularities were perpetuated by the 2nd Respondent. Two internal processes within the party were concerned that the 2nd Respondent was the perpetrator of the irregularities and on two occasions ordered the revocation of the nomination certificate issued to the 2nd Respondent and instead directed that a certificate be issued to the Complainant. The two processes within the 1st Respondent concurred in their findings that the Complainant was the winner and we see no reason to interfere with those decisions.

Orders

7. From the foregoing, we find that the Complainant succeeds in her complaint as averred through an Amended Complaint filed on 13th May 2017. We therefore grant the following prayers;

- a) An injunction be and is hereby granted restraining the 1st and/or the 2nd Respondents whether by themselves, their servants, agents, proxies and any other person acting under their authority from submitting the name of the 2nd Respondent to the Independent Elections & Boundaries Commission as the 1st Respondent's nominee for the position of Member of County Assembly for Kanyasa Ward, Nyatike Constituency, Migori County, arising out of the nomination exercise held on 24th April, 2017.
- b) The Complainant herein, JACKLINE ATIENO ONGORO, is the *bonafide* 1st Respondent's nominee of the position of Member of County Assembly, Kanyasa Ward, Nyatike Constituency, Migori County.
- c) An order be and is hereby issued directed at the 1st Respondent to cancel the nomination certificate issued to the 2nd Respondent and instead issue the Nomination Certificate to the Complainant herein, JACKLINE ATIENO ONGORO.
- d) Notice of this decision to issue to the Independent & Electoral Boundaries Commission.
- e) No order as to costs.

Orders accordingly.

DATED and DELIVERED AT NAIROBI this 13TH DAY of MAY 2017

1. M. O. Lwanga (Presiding Member)

2. Desma Nungo (Member)

3. Dr. Adelaide Mbithi (Member)