



THE REPUBLIC OF KENYA
IN THE POLITICAL PARTIES DISPUTES TRIBUNAL AT NAIROBI
COMPLAINT 73 OF 2017

JOAN OGADAAPPLICANT

VERSUS

ELIPHAS ODUOR OMONDI.....1ST RESPONDENT

ORANGE DEMOCRATIC MOVEMENT.....2ND RESPONDENT

BENARD ODHIAMBO OGADO.....3RD RESPONDENT

RULING

Background

1. This ruling is reference to an application for review dated 12th May 2017 filed by Joan Ogada. The present application dated 12 May 2017 relates to a decision of this Tribunal issued on 11 May 2017. The Applicant sought a review of the orders issued on 11 May 2017 on the basis that the Special County Appeals Tribunal (SCAT) decision, based on which the 1st Respondent had successfully applied for review, had been obtained without disclosing that there was an earlier decision of the Homabay County Appeals Board in respect of the same matter. Since the two bodies were of concurrent jurisdiction, it was the Applicant's contention that the SCAT could not sit on appeal of the County Appeals Board (CAB). Further, it was their contention that if SCAT had been aware of the IDRMs proceedings of 28 April 2017, it would not have entertained the matter.

2. In support of her application, the Applicant relied on the affidavits of the chair of SCAT to the effect that if SCAT had been aware of the CAB proceedings, they would not have proceeded with the matter. Anthony Moturi, Legal and Parliamentary Liaison Officer of the 2nd Respondent also swore an affidavit confirming that SCAT only had jurisdiction in respect of counties where the 2nd Respondent did not have an appeals tribunal.
3. The 1st Respondent contended that the application was *res judicata*. The 3rd Respondent relied on the Applicant's affidavit save for the prayer. He asked that the 3rd Respondent's certificate be upheld and his name forwarded to the Independent Electoral and Boundaries Commission.

Analysis

4. The 2nd Respondent's primaries in respect of Member of the County Assembly, Kojwach Ward, in Homabay County, were properly conducted. At that point, the nomination certificate was issued to Joan Ogada. Thereafter, issuance of the certificate for the same position was made to Bernard Ogodo, the 3rd Respondent in the Complaint. Determining who was the rightful holder of a certificate thus became a factor in issue and was the subject of the original complaint before this Tribunal.
5. The determination of who was the rightful holder of the certificate was of key concern at each stage of decision making and all information that was needed to enable this Tribunal to make an informed decision ought to have been availed. It is unfortunate that the 2nd Respondent took a backseat in these proceedings. Information availed through the review application is crucial as it is the key party officials who can assist this Tribunal determine the issue with finality. Noteworthy is the fact that the IDRM that took into account input and

information from all aspirants as well as the party officials involved played a key role in our determination that is sought to be reviewed.

6. In the circumstances, the Notice of Motion application for review dated 12 May 2017 succeeds.

Orders

7. In light of the foregoing, we make the following orders:
 - a. *That the decision of this Tribunal rendered on 11 May 2017 is reviewed.*
 - b. *That the 2nd Respondent to forthwith issue a final certificate of nomination in reference to Kojwach Ward, Kasipul Constituency in Homabay County to Joan Ogada in line with the findings of ODM Homabay County Appeals Board of 28 April 2017.*
 - c. *That the certificate issued to Bernard Godo be and is hereby revoked.*
 - d. *That a notification issue to IEBC forthwith.*
 - e. *That each party will bear its own costs.*

Dated at NAIROBI this 13th DAY of MAY 2017

M. O. Lwanga (Presiding Member)

Desma Nungo(Member)

Dr. Adelaide Mbithi(Member)