



REPUBLIC OF KENYA  
IN THE POLITICAL PARTIES DISPUTES TRIBUNAL AT NAIROBI  
COMPLAINT NO. 75 OF 2017

LUCAS NTALAMEA OLE KUDATE.....COMPLAINANT  
VERSUS  
PARSALOI BERNARD.....1<sup>ST</sup> RESPONDENT  
JUBILEE PARTY.....2<sup>ND</sup> RESPONDENT

JUDGMENT

**A. Complaint**

1. The Complainant, in his Complaint dated 9<sup>th</sup> May 2017, contends that the 2<sup>nd</sup> respondent’s party primaries for Member of County Assembly for Narok Town Ward, conducted on 25<sup>th</sup> April 2017, was fundamentally flawed, marred with irregularities perpetuated by the 1<sup>st</sup> respondent and is therefore null and void *ab initio*. He contends that he won this nomination exercise.
2. He prays for this Tribunal to declare the election of the 1<sup>st</sup> respondent null and void, to declare him the validly elected Member of County Assembly for Narok Town Ward and he asks for the 1<sup>st</sup> respondent to be disqualified from the upcoming general elections for violating the election results.
3. Prior to these Tribunal proceedings, the complainant on 30<sup>th</sup> April 2017, filed an appeal dated 26<sup>th</sup> April 2017 against the nomination exercise at the 2<sup>nd</sup> respondent’s Elections Appeals Tribunal (IDRM). The IDRM, upon hearing both complainant and the 1<sup>st</sup> respondent determined that the complainant had not provided evidence in support of his allegations that the 1<sup>st</sup> respondent was involved in the irregularities. It also determined that the claimant did not provide substantive proof that the alleged

irregularities affected the results. It dismissed the appeal and upheld the nomination results of the 1<sup>st</sup> respondent.

4. The complainant then moved this tribunal by an urgent application dated 3<sup>rd</sup> May 2017 and was granted interim reliefs in the nature of restricting the 2<sup>nd</sup> respondent from issuing its certificate for Member of County Assembly for Narok Town Ward to the 1<sup>st</sup> respondent or in the event the same has been issued, to suspend it pending *inter partes* hearing of the application.

### **B. Response**

5. The 1<sup>st</sup> respondent in opposing the Complaint relied on his replying affidavit and written submissions dated 9<sup>th</sup> May 2017. He urged that all the Complainants allegations in these proceedings were made before the IDRM and were found lacking in merit. He urged that the application did not in any way impeach the 1<sup>st</sup> respondent as the clear winner of the nominations but simply pointed out instances in which the exercise had discrepancies. He urged us to dismiss the application.

### **C. Issues for determination**

6. Upon considering all the pleadings, oral and written submissions, the issue that emerges for determination is *whether or not there is reasonable basis to declare the Complainant the validly elected Member of County Assembly for Narok Town Ward.*

### **D. Analysis and determination**

7. The complainant seeks for us to declare him the winner to the nomination exercise carried out on 25<sup>th</sup> April 2017. He claims that the nomination exercise cannot possibly have resulted in a valid electoral process. He alleges that there was massive transfer of voters, no voter registers in all polling stations and that the returning officer declared the 1<sup>st</sup> respondent as the winner despite his agents declining to sign

the requisite JP3 form. He also alleges that people who were not party members were allowed to vote. Further, that no indelible ink was provided so voters could vote as many times as possible.

8. He also alleges that the 1<sup>st</sup> respondent was arrested with pre-marked ballot papers marked in his favour and this matter is ongoing at Narok Police Station where investigations are ongoing. He also contends that the 1<sup>st</sup> respondent hired youth to disrupt the polling at one of his strongholds; Masikonde polling Station. The complainant has attached, as evidence, a tallying sheet that shows the contested 1<sup>st</sup> respondent's win, a photocopy of alleged pre-marked ballot papers, an alleged O.B No. 37/25/4/2017 and an alleged picture of the 1<sup>st</sup> respondent's car confiscated with pre-marked ballots at Masikonde Polling Station. All these are disputed by the 1<sup>st</sup> respondent. We are also not satisfied with the authenticity of the evidence attached. From the record, we are not convinced that sufficient evidence has been adduced to support the Claimant's claim on a balance of probabilities. In the circumstances, we uphold the decision of the Jubilee Party Appeals Tribunal dated 30<sup>th</sup> April 2017 be and is hereby dismissed with no order as to costs.

**Orders**

9. The Statement of Claim dated 3<sup>rd</sup> May 2017 be and is hereby dismissed with no orders as to cost.

**DATED AT NAIROBI THIS 9<sup>th</sup> DAY OF May 2017.**

1. **M. O. Lwanga (Presiding Member) .....**
2. **Paul Ngotho (Member).....**
3. **Dr. Adelaide Mbithi (Member) .....**
4. **Desma Nungo (Member) .....**