



THE REPUBLIC OF KENYA  
IN THE POLITICAL PARTIES DISPUTES TRIBUNAL AT NAIROBI  
COMPLAINT 98 OF 2017

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EMMANUEL O ACHAYO.....COMPLAINANT

VERSUS

ORANGE DEMOCRATIC MOVEMENT

COUNTY APPEAL TRIBUNAL.....1<sup>ST</sup> RESPONDENT

ORANGE DEMOCRATIC MOVEMENT.....2<sup>ND</sup> RESPONDENT

ABIGAIL PERPETUA AWINO.....3<sup>RD</sup> RESPONDENT

**JUDGMENT**

**Background**

1. The Complaint was a candidate for nomination for Member of the County Assembly, Gem Central Ward, Siaya County for the 2<sup>nd</sup> Respondent. The nomination exercise was conducted on 25 April 2017. In his Statement of Claim dated 6 May 2017 and amended on 8 May 2017, the Claimant contended that the nomination exercise was marred with irregularities, some of which were occasioned by the 3<sup>rd</sup> Respondent. Further, the Claimant contended that while the results were declared in some polling stations, they were not tallied and announced at the designated tallying centre. As a result, it was his contention that there was no declaration of a winner of the said election.
2. The Claimant, being aggrieved by the alleged non-declaration of results, among other irregularities, presented an appeal to the 1<sup>st</sup> Respondents National Elections Board by a letter dated 26 April 2017. On 2 May 2017, his complaint was heard and a decision reserved for later that day. However, the decision was not rendered until 6 May 2017, when the Complainant lodged the present Complaint. He sought to have the National Elections Board make a determination of his complaint and an order nominating him to vie for the Member of the County Assembly, Gem Central Ward, Siaya County.

3. On 6 May 2017, the Complainant was served with the decision of the Siaya County Appeals Tribunal (hereinafter IDRМ) dismissing his appeal on the basis that no evidence of the irregularities alleged by the Claimant had been adduced. He was granted leave to amend his statement of claim. At the hearing of the Complaint on 9 May 2017, the Claimant maintained that the nomination exercise had been marred with irregularities and no official results were ever declared. The Claimant relied on the affidavit of Isaac Poka, a presiding officer, to the effect that no results were ever declared. Further, the Claimant contended that the decision of the IDRМ was issued in violation of party nomination rules, which required decisions to be issued within 48 hours of the appeal.
4. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents were not represented at the hearing. Mr K'Opot for the 3<sup>rd</sup> Respondents asserted that the complaint contained unsubstantiated allegations. He maintained that the IDRМ decision did not find irregularities to have occurred and that the Claimant had not presented any new material to justify altering the IDRМ finding.
5. Mr K'Opot further asserted that the Claimant could not be declared the winner solely based on his tallies as these results were not confirmed by any Returning Officer or Presiding Officer. In any event, Mr Poka, who had averred that results had not been announced at the tallying centre, was not responsible for such declaration as he, being a presiding officer, was only responsible for results at the polling station.

**Issue for Determination**

6. It is not contested that a nomination exercise was conducted for MCA seat, Gem Central Ward, Siaya County. It is also uncontested that there was an IDRМ process, resulting in a decision dated 6 May 2017, dismissing the Claimant's appeal. It seems to us that only one issue falls for determination: whether the decision dated 6 May upholding the 3<sup>rd</sup> Respondent's nomination should be upheld.

**Analysis**

7. The Claimant has prayed that the IDRМ decision be set aside and the nomination certificate issued to him. The allegation of non-declaration of results, on the basis of which the Claimant lodged this Complaint, was heard and determined by the Siaya County Appeals Tribunal. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents did not appear at the hearing of the matter, neither did they file a response to the allegations of

non-declaration of results, so we could not establish whether a certificate of return was issued in respect of the said election. Nevertheless, the burden of proof rests with the Claimant to satisfy this Tribunal that the decision of the County Special Appeals Tribunal was flawed. We find that he did not.

8. On the assertion that the appeal decision was issued outside the timeline set out in the party constitution, we are guided by section 41 (4) of the Political Parties Act which requires us to determine matters before us without undue regard to procedural technicalities.
9. In light of the foregoing, the claim fails.

**Reliefs**

10. The Tribunal upholds the decision of the Siaya County Special Appeals Tribunal dated 6 May 2017 nominating the 3<sup>rd</sup> Respondent as the 1<sup>st</sup> Respondent's nominee for Member of the County Assembly, Gem Central Ward, Siaya County, and orders the 1<sup>st</sup> Respondent to issue the final nomination certificate to the 3<sup>rd</sup> Respondent within two (2) days.
11. In the interests of party unity, each party will bear its own costs.

Dated at **NAIROBI** this **10<sup>th</sup> DAY** of **MAY** 2017

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