



REPUBLIC OF KENYA
IN THE POLITICAL PARTIES TRIBUNAL AT NAIROBI
COMPLAINT NO 158 OF 2017

AKUK MO.....COMPLAINANT

VERSUS

ORANGE DEMOCRATIC MOVEMENT.....1ST RESPONDENT

ODM ELECTIONS BOARD.....2ND RESPONDENT

KENNEDY OYUGI.....3RD RESPONDENT

JACKTON ONYANGO KAPARO.....INTERESTED PARTY

JUDGMENT

Introduction

1. Akuk Mo, the Claimant herein, participated in the 1st Respondent’s nominations for Member of County Assembly, Nyayo Highrise Ward, Langata Constituency in Nairobi County. He claims he won those nominations, but was not issued with the certificate. The National Appeal Tribunal’s award in his favour has never been implemented. He seeks appropriate relief from this Tribunal.

Claimant’s Case

2. The 1st Complainant alleges that he garnered 793 votes and was declared the winner, ahead of the 2nd Respondent who garnered 650 votes. However, he was never issued with the nomination certificate.
3. He successfully appealed to the 1st Respondent’s National Appeals Tribunal. The tribunal suspended the nomination of the 3rd Respondent and withdrew the

- nomination certificate. The tribunal directed that he be issued with the nomination certificate, but this has never come to pass.
4. Instead the 1st Respondent has unlawfully awarded a nomination certificate dated 3rd May, 2017 to the 3rd Respondent and irregularly forwarded his name to the Independent Elections and Boundaries Commission.
 5. The Claimant in his further affidavit, at paragraph 4, admits that no one was announced winner due to the violence and chaos attributable to the 3rd Respondent. Further he clarifies that while the 3rd Respondent claims to have been declared winner at the County tallying center at Nyayo Stadium the Constituency tallying center was at Madaraka Primary School.
 6. He annexes an affidavit by Samuel Oduor Asaria who claims he was the Polling Clerk Officer for Nyayo Highrise Ward. During voting, it is alleged that the Ward Presiding Officer Mr. Victor Okumu suddenly disappeared and could not be reached on his official number 0724340886.
 7. Mr. Asaria depones that the other polling clerks then nominated him to supervise the voting process. On close of polling, he received results from all the five polling stations which had been counted in the presence of polling clerks and agents. Tallying was interrupted by people chanting the name of Mr. Oyugi. Teargas was lobbed in the tallying hall causing people to scamper away.
 8. Mr. Asaria further depones that he left the tallying center with the results intending to submit them to the Constituency Returning Officer at Madaraka Primary School. He did not find him there and the place was abandoned. Nevertheless, according to the votes he tallied, the Claimant emerged victorious with 793 votes while the 3rd Respondent came second with 650 votes. We note that the Polling Station Forms in his affidavit are not signed by the Ward Presiding Officers.

1st Respondent's Case

9. The 1st Respondent did not file an affidavit or written submissions as directed.

3rd Respondent's Case

10. The 3rd Respondent submits that following the conclusion of tallying of re-election results he was announced as winner and issued with a provisional nomination certificate. Subsequently, the ODM Board having "received and verified the results" issued him with a certificate of nomination dated 3rd May, 2017.
11. He depones that he was declared winner by Jeremia Aganda Ochiel the Returning Officer for Langata Constituency.

Interested Party's Case

12. The interested party herein also claims that he won the said nominations and was indeed declared the candidate for Nyayo Highrise Ward. The declaration was made by one James E Okoth yet another Returning Officer for Langata Constituency. He claims he was not aware of these proceedings and was only alerted by a friend. He was similarly not aware of the proceedings before the County Appeals Tribunal. He wondered why the Claimant and 2nd Respondent who all lost to him would be litigating over a certificate he holds behind his back.
13. We have noted that the results annexed to the interested party's affidavit have been signed by Mr. Okumu Vick who is said to have disappeared midway through the polling.
14. The Interested Party relies on an affidavit by the County Returning Officer who depones that the Interested Party was declared winner by the Ward Returning Officer. We further note that under Rule 4.1.3 of the 1st Respondent's Election and Nomination Rules, only a Constituency Returning Officer can declare results of

elections after tallying. The role of Ward Presiding Officers is limited to supervision of polling and tallying within polling stations.

Analysis

15. From the evidence on record, we are satisfied that the results for member of County Assembly, Nyayo Highrise Ward were for some reason or another never declared. One of the qualities of free and fair elections is the prompt declaration of results. Like nature, election results abhor a vacuum.
16. In this case, each candidate obtained their own set of results which they have filed before this Tribunal. There were at least two alleged Langata Constituency Returning Officers. Each declared one of the parties to this dispute as having been elected. What emerges is that the 1st Respondent did not put in place adequate mechanisms toward a credible party primary. In *Complaint No 48 John Mruttu v Thomas Ludindi Mwadeghu at para 36* we held as follows:

We adopt that decision and hold that the justification for direct nomination given by the 2nd Respondent's Executive Officer does not suffice. Political parties not only enjoy a constitutional status, but also get funds from the public purse and their members. They owe it to their members to invest in proper systems and employ competent personnel who can conduct primaries efficiently and fairly while allowing adequate time for the party to resolve any disputes arising from those primaries. (emphasis supplied)

17. We adopt that decision to the facts of this case and hold that the 1st Respondent did not conduct credible party primaries for Nyayo Highrise Ward. We have deliberately avoided making any comments on the allegations of electoral violence to avoid pre-judging any subsequent proceedings in that regard.

Reliefs

18. To conclude this matter, we make the following orders:

(a) A declaration be and is hereby issued to the effect that the 1st Respondent did not conduct free and fair nomination for position of Member of the County Assembly, Nyayo Highrise Ward, Langata Constituency.

(b) An order be and is hereby issued directing the 1st Respondent to conduct a fresh nomination exercise for position of Member of County Assembly, Nyayo Highrise Ward, Langata Constituency, within 48 hours of pronouncement of this judgment.

*(c) We make no order as to costs in the interest of party unity
Orders accordingly.*

DATED and DELIVERED at Nairobi this 15th day of MAY 2017

Kyalo Mbobu

Chairperson

James Atema

Member

Hassan Abdi

Member