



REPUBLIC OF KENYA

IN THE POLITICAL PARTIES DISPUTES TRIBUNAL AT NAIROBI

COMPLAINT NO. 143 OF 2017

ALEX OUDA OTIENO.....APPLICANT

VERSUS

ORANGE DEMOCRATIC MOVEMENT.....1<sup>ST</sup> RESPONDENT

OSCAR OMOKE.....2<sup>ND</sup> RESPONDENT

RULING

*Introduction*

1. This ruling relates to the applicant’s Notice of Motion application dated 26<sup>th</sup> May, 2017. The application, seeks review of this Tribunal’s judgment dated 11<sup>th</sup> May, 2017. In that judgment, the Tribunal had held that James Okoth, the Returning Officer who had declared the Claimant winner had not been validly appointed.
2. As a result, this application is premised on the grounds that the Claimant has found witnesses, who were present when the Returning Officer one James Okoth tallied the results and declared Claimant winner. These witnesses ostensibly confirm that James Okoth was appointed to replace Jeremiah Aganda Ochiel who had been barred from conducting any election for his involvement in electoral misconduct.
3. The Respondent submits that the only evidence that the only evidence that can suffice is a letter of appointment duly issued by the 1<sup>st</sup> Respondent to its rightful Returning Officer. The Respondent contends that there is no evidence to support the contention that there was another Returning Officer for Langata

Constituency other than Jeremiah Aganda Ochiel. He reiterated that the 1<sup>st</sup> Respondent had confirmed within these proceedings that Jeremiah Aganda Ochiel was its Returning Officer for Langata Constituency.

4. In the end, it is the 2<sup>nd</sup> Respondent's submission that the application does not meet the threshold of section 80 of the Civil Procedure Act, 2017 and Order 45 Rule 1 of the Civil Procedure Rules, 2010. What has been brought forward, is not really new evidence as the same was within the knowledge of the applicant at the time he filed his complaint on 8<sup>th</sup> May, 2017.

### Analysis

5. Order 45 of the Civil Procedure Rules, 2010 provides:

**Any person considering himself aggrieved by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or from a decree or order from which no appeal is allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.**

6. We are persuaded that this is a fit and proper case for review on the grounds that the identity of the legitimate Returning Officer, James Okoth, amounts to new and important matter or evidence which, after the exercise of due diligence, could not be produced by the applicant at the time the when the judgment was

passed. Since the judgment of 11<sup>th</sup> May, 2017 turned on the ground that James Okoth, the Returning Officer who had declared the Claimant winner had not been validly appointed, there is now sufficient reason to review that decision. We are therefore persuaded that there are proper grounds of review in this application.

***Orders***

7. We find that there is sufficient cause to warrant a review. Accordingly, the Notice of Motion dated 26<sup>th</sup> May 2017 is allowed in terms of prayers 3, 4, 5 and 6 thereof and hold that:

- a) the 1<sup>st</sup> Respondent be and is hereby stopped from forwarding the name of the 2<sup>nd</sup> Respondent to the IEBC as its candidate for the position of Member of National Assembly, Lang'ata Constituency, Nairobi County;
- b) that the Claimant be and is hereby declared the winner of the 1<sup>st</sup> Respondent's nominations as its candidate for the position of Member of National Assembly, Lang'ata Constituency, Nairobi County;
- c) the 1<sup>st</sup> Respondent be and is hereby ordered to issue the Claimant with the nomination certificate and for the position of Member of National Assembly, Lang'ata Constituency, Nairobi County; and
- d) in the interest of party unity, each party to bear its own costs.

**DATED and DELIVERED at Nairobi this 8<sup>th</sup> day of June 2017**

**Kyalo Mbobu ..... (Chairperson)**

**Paul Ngotho ..... (Member)**

**Desma Nungo ..... (Member)**