



REPUBLIC OF KENYA

POLITICAL PARTIES DISPUTES TRIBUNAL

COMPLAINT NO. 35 OF 2017

ANDREW MOKORO NYAGWANSAAPPLICANT

-VERSUS-

GEORGE MORARA MOCHECHE.....1ST RESPONDENT

ORANGE DEMOCRATIC MOVEMENT.....2ND RESPONDENT

RULING

Summary of the application

[1] The Chamber Summons Application dated 9th May 2017 concerns the decision of this Tribunal in *Complaint No. 35 of 2017* delivered on 28th April 2017. The Applicant is seeking for this Tribunal to compel the 2nd Respondent to declare him winner and issue him with a nomination certificate for the position of Member of Parliament, Kajiado North Constituency. Further, that the Orange Democratic Movement (ODM) party be treated as in contempt of court orders issued by this Tribunal on 28th April 2017.

[2] The Applicant in his submissions argued that under section 6 of the Contempt of Court Act No. 46 of 2016, the 2nd Respondent should be sentenced for six months or an alternative of One Million Shillings fine issue against it for willfully disobeying court orders. In support of his application, the Applicant tendered an affidavit of service averred by a licensed process server, Godfrey Omambia, who avers that he served the receptionist at the ODM party offices who accepted service by signing

and stamping on the face of the document. Further, he averred that he traveled to the 1st Respondent's residence and effected service although the documents were not signed for by the person who received them.

[3] In response, the 2nd Respondent submitted that although the said section 6 is the applicable provision, the contemnors should be subjected to fair trial and administrative processes. He argued that prayer 3 of the application does not clearly indicate the title of the alleged contemnor within the political party. Further, that the applicant effected service upon a receptionist and not upon a Principal Officer of the 2nd Respondent which was critical due to the punitive effect of the orders being served. The Applicant has therefore not shown proof of the orders having being served. Citing the case of *Ochino and Another v. Okombo & 4 Others [1989] KLR*, the 2nd Respondent submitted that the Applicant has not effected service in line with the requirements under law.

Analysis and determination

[4] Upon perusal of the record before us, we find that the application is not supported and lacks merit. The Applicant has not exhibited evidence of service of orders of 28th April 2017. The Affidavit of Service adduced only demonstrates the service of the current application upon the receptionist of the 2nd Respondent who clearly was not the official with the mandate to execute the task or order. The application does not specify which order has not been complied with and which particular person under the 2nd Respondent is responsible for the implementation of the order. The Tribunal further appreciates in reference to the application, that the entire ODM party cannot be treated as to be in contempt. In essence, the Applicant has not sufficiently proved his case as to be deserving of the prayers sought.

Reliefs

Accordingly, the application is hereby dismissed with no order as to costs.

DATED and DELIVERED AT NAIROBI this 11th DAY of MAY 2017

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