



**REPUBLIC OF KENYA**  
**IN THE POLITICAL PARTIES DISPUTES TRIBUNAL**  
**COMPLAINT NO. 115 OF 2017**

PROF. AYIECHO OLWENY .....COMPLAINANT

-VERSUS-

JAMES ONYANGO K'OYOO.....1<sup>ST</sup> RESPONDENT

ORANGE DEMOCRATIC PARTY OF KENYA .....2<sup>ND</sup> RESPONDENT

**JUDGMENT**

**Summary of the Complaint**

- [1] The 2<sup>nd</sup> Respondent conducted a party nomination exercise for the position of Member of the National Assembly, Muhoroni Constituency on 25<sup>th</sup> April 2017 where the 1<sup>st</sup> Respondent was declared the winner. Aggrieved by the outcome, the Complainant lodged an appeal with the Orange Democratic Party (ODM) National Appeals Tribunal (hereinafter referred to as IDRMT). At the time of filing his complaint on 6<sup>th</sup> May 2017, the party's IDRMT was yet to render a decision. Apprehensive that the 2<sup>nd</sup> Respondent would issue its nomination certificate to the 1<sup>st</sup> Respondent, the Complainant approached this Tribunal seeking redress.
- [2] The Complainant avers before this Tribunal that the Returning Officer declared the final results in absence of the final tallies from the five wards in Muhoroni Constituency from which the respective Presiding Officers did not submit their results and therefore it remains unclear what the final results announced by the Returning Officer were based on.
- [3] The 1<sup>st</sup> Respondent in his replying affidavit dated 8<sup>th</sup> May 2017 avers that indeed the Complainant filed an appeal before the party's IDRMT which dismissed the matter and directed the party to issue a certificate of nomination to the 1<sup>st</sup> Respondent. The 2<sup>nd</sup> Respondent admitted that there was a delay in rendering

the IDRDM decision which was unintentional and due to the heavy traffic of disputes to be determined.

**Issues for Determination**

[4] The sole issue for determination is *whether or not the Complainant should be awarded the nomination certificate.*

**Analysis**

[5] That there were irregularities during the nomination process is undisputed. However, the Complainant's allegations that the results of the five polling stations have not been submitted for tallying to the Returning Officer remain unsubstantiated. Further, one Presiding Officer who offered testimony on behalf of the Complainant before the party's IDRDM, claimed that he was still in possession of one of the ballot boxes. This officer who testified on the Complainant's behalf, according to his very own testimony, perpetrated the irregularities that the Complainant alleges. This was also noted by the party's IDRDM which recommended an investigation of the officer by the National Elections Board. Like the party's IDRDM, this Tribunal attached little credence to the Complainant's testimony.

[6] It is clear that the party's IDRDM considered all the allegations in their deliberations and determined that there was no material evidence to warrant an upset of the results as announced by the Returning Officer. Moreover, it is contradictory that the Complainant would on one hand plead irregularities and yet seek to benefit from the same by seeking the declaration in his favour. This Tribunal is therefore reluctant to interfere with the IDRDM decision.

**Orders**

The Complainant has not persuaded this Tribunal that he is deserving of the claims sought in his statement of claim filed on 6<sup>th</sup> May 2017. The same is dismissed with no order as to costs.

**DATED and DELIVERED AT NAIROBI this 9<sup>TH</sup> DAY of MAY 2017**

- 1. Milly O. Lwanga (Presiding Member) .....**
- 2. Paul Ngotho (Member)..... ..**

3. Dr. Adelaide Mbithi (Member) .....
4. Desma Nungo (Member) .....