



THE REPUBLIC OF KENYA  
IN THE POLITICAL PARTIES DISPUTES TRIBUNAL AT NAIROBI  
COMPLAINT 150 OF 2017

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BISHOP MARTIN O. PHIRI .....COMPLAINANT

VERSUS

ORANGE DEMOCRATIC MOVEMENT

NATIONAL ELECTIONS BOARD.....1<sup>st</sup> RESPONDENT

MICHAEL OKUMU OGADA.....2<sup>ND</sup> RESPONDENT

**JUDGMENT**

**Background**

1. The present Complaint relates to the 1<sup>st</sup> Respondent's nomination for Member of the County Assembly, Embakasi Ward, Embakasi East Constituency, Nairobi County held on 30 April 2017. Being aggrieved by the manner in which the nomination exercise was carried out and alleged electoral malpractices carried out by the 1<sup>st</sup> and 2<sup>nd</sup> Respondent, the Claimant lodged a complaint on 2 May 2017 with the 1<sup>st</sup> Respondent's Electoral Board citing the alleged irregularities. He asserted that the electoral irregularities carried out included ballot stuffing, late opening of polling stations, double voting, campaigning during nominations and electoral violence.
2. The Claimant further contended that the appeal was heard by the 1<sup>st</sup> Respondent's National Appeals Tribunal where both the Claimant and the 2<sup>nd</sup>

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Respondent participated in the hearings. However, the Claimant alleged that on the day the ruling was to be delivered, he was informed by the 1<sup>st</sup> Respondent that the ruling would be delivered when it was ready.

3. The Claimant also asserted that he attempted to obtain a copy of the ruling on 8 May 2017, but was notified that there would be a delay in releasing the same. Apprehensive that he would be locked out of the nomination exercise, the Claimant approached this Tribunal seeking that the nomination exercise for the said electoral seat be declared not free and fair and that the 1<sup>st</sup> Respondent be directed to conduct fresh nominations for Member of the County Assembly, Embakasi Ward.
4. The Claimant's Amended Statement of Claim was supported by the affidavit of Alfred Owanda dated the same day attesting to the irregularities cited in the Amended Statement of Claim.
5. When the matter first appeared before us on 8 May 2017, we directed the Claimant to first exhaust IDRMs before the matter could proceed to full hearing. At the next hearing on 9 May 2017, Ms Marienga for the Claimant submitted that IDRMs had been instituted but no ruling had been given in respect of the same. The same is demonstrated by the letter dated 2 May 2017

**ISSUES FOR DETERMINATION**

6. The Claimant has prayed for a fresh nomination exercise on the basis that the nomination exercise in respect of Member of the County Assembly, Embakasi Ward was not free and fair. It therefore appears to us that the only issue for determination is whether the 1<sup>st</sup> Respondent's conduct of the nominations for Member of the County Assembly, Embakasi Ward was free and fair.

**ANALYSIS**

7. The Claimant's main contention is that the nomination results should be nullified because the exercise was not free and fair. While the Claim was not contested, since electoral disputes not only concern the parties who take part in electoral dispute resolution, but the entire electorate that seeks to elect a representative, the Claimant would have to prove his case on a balance of probabilities to overturn the election result. Moreover, there is a presumption that elections are conducted in accordance with the rules and electoral laws. Therefore, anyone seeking to overturn an election result, must do more than make general allegations. They must provide 'cogent, credible and consistent evidence' as stated by the Supreme Court in *Raila Odinga & Others v IEBC & Others SCEP 5 of 2013*.
8. After considering the record produced by the Claimant, we are not satisfied that he has proved his Claim on a balance of probabilities.
9. The Claimant has not satisfied this Tribunal, on a balance of probabilities, that the nominations were irregularly conducted.

**ORDERS**

10. In the circumstances, we direct as follows:
  - a. The Amended Statement of Claim dated 8 May 2017 fails.
  - b. Each party to bear its own costs.

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

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