



REPUBLIC OF KENYA
IN THE POLITICAL PARTIES DISPUTES TRIBUNAL AT NAIROBI
COMPLAINT NO. 273 OF 2017

BOAZ ABWAO KIVANDA.....CLAIMANT/APPLICANT
VERSUS
ORANGE DEMOCRATIC MOVEMENT PARTY..... RESPONDENT

JUDGMENT

Complaint

1. The claimant, in his Complaint dated 16th May 2017 avers that his concerns with the party nomination process lodged with the party organs for resolution were determined. He further states that the Respondent has however refused to obey the Orange Democratic Movement Party Migori County Elections Appeal Tribunal's (IDRM) ruling in Appeal No. 19 of 2017 dated 29th April 2017.
2. He approached this Tribunal under certificate of urgency having filed his amended Notice of Motion and amended Verifying Affidavit both dated 22nd May 2017 and the statement of claim dated 16 May 2017. He seeks to compel the Respondent to obey the ruling of the IDRM dated 29th April 2017 and issue him a final nomination certificate as the Respondent's candidate for the General Elections 2017 for the Respondent's East Kanyamakango Ward. Further, he seeks that the Respondent be restrained from issuing this said certificate to any other person other than the complainant. He also seeks that in the event that the respondent has issued the final

nomination certificate to any other aspirant, the same be recalled. The claim is unopposed.

Issue for determination

3. The issue that emerges for determination is *whether the Respondent ought to issue a final nomination certificate to complainant in respect of the position for Member of County Assembly (MCA) East Kanyamakango Ward.*

Analysis and determination

4. The Claimant has in support of his claim, placed on record, the IDRMM decision dated 29th April, 2017. In the said IDRMM appeal, which was unopposed, the claimant sought orders restraining the respondent from issuing one Rueben Keya with a final nomination certificate as the respondent's nominee for the post of MCA East Kanyamakango Ward. His objection to such issuance was based on his claim that if the process had been free and fair, he would have emerged winner with a landslide victory.
5. The IDRMM was satisfied that he had proven his claim. It recommended that the interim certificate issued to Rueben Keya be cancelled and a final nomination certificate be issued to the claimant or in the alternative, a repeat nomination be done in Arambe, Mayatta and Ndhim Jope polling stations.
6. The claimant avers that to the best of his knowledge, a repeat nomination, as directed through the IDRMM, has not been done, which in essence means that the final nomination certificate ought to be issued to him.
7. There is no evidence on record to show that a repeat nomination was conducted in the designated polling stations stated in the IDRMM ruling. The evidence presented by the Claimant indicates that he had duly satisfied the relevant party organ that he was the more popular candidate. To this end, we are satisfied that a final

nomination certificate should be issued to the claimant. As such, this Claim succeeds.

Orders

8. We make the following orders:

- a. The Respondent is hereby directed to issue the final nomination certificate for Member of County Assembly East Kanyamakango Ward to the claimant in accordance with the ruling of the Orange Democratic Movement Party Migori County Elections Appeal Tribunal dated 29th April 2017.
- b. Notification to issue to the Independent Electoral and Boundaries Commission.
- c. No orders as to costs.

DATED AT NAIROBI THIS 25th DAY OF MAY 2017

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