



THE REPUBLIC OF KENYA  
IN THE POLITICAL PARTIES DISPUTES TRIBUNAL AT NAIROBI  
COMPLAINT NO. 138 OF 2017

BOOKER OTIENO MINAMI.....COMPLAINANT

VERSUS

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

SAMUEL OTIENO SIGURU.....2<sup>ND</sup> RESPONDENT

JUDGMENT

Background

1. The present complaint was lodged with the Tribunal by way of a Memorandum of Claim dated 8 May 2017. It was the Claimant's assertion that he was a candidate for Member of the County Assembly, East Gem Ward, Siaya County that was conducted by the 1<sup>st</sup> Respondent on 25 April 2017.
2. It was his contention that at the conclusion of voting he was declared the winner by the Ward Returning Officer. Thereafter, a tallying sheet was prepared and signed and presented to the Constituency Returning Officer, with the promise that the said officer would issue the provisional nomination certificate to the Claimant in due course.
3. Contrary to the Claimants expectation, the nomination certificate was issued to the 1<sup>st</sup> Respondent in contravention of the party nomination rules, Elections Act and Constitution of Kenya since the said results that had emanated at and on the polling day had not been challenged before any organ.

4. He therefore sought a declaration that the nomination certificate issued to the 1<sup>st</sup> Respondent was invalid and an order directing the 2<sup>nd</sup> Respondent to issue the nomination certificate to the Claimant. In support of his application, he annexed results from various polling stations as well as a copy of a nomination certificate dated 8 May 2017 allegedly issued to the 2<sup>nd</sup> Respondent.
5. When the matter came up for hearing on 8 May 2017, the Tribunal directed that it be stood over generally pending further documentation to show the attempt at internal dispute resolution mechanism (IDRM) before the 1<sup>st</sup> Respondent.
6. There was no further progress on the matter until 22 May 2017 when counsel for the 2<sup>nd</sup> Respondent filed a Notice of Motion under Certificate of Urgency seeking, *inter alia*, that the Independent Electoral and Boundaries Commission (IEBC) be restrained from gazetting the Complainant as the duly nominated candidate in respect of the East Gem Ward MCA seat, that the Tribunal enjoin the IEBC to the proceedings and that the IEBC be compelled to gazette the name of the 2<sup>nd</sup> Respondent as the duly nominated candidate.
7. The 2<sup>nd</sup> Respondent's position is that while he won the nomination exercise and was issued with a nomination certificate, his name had been removed from the list of candidates presenting from the 1<sup>st</sup> Respondent's and replaced with that of the Claimant. He was therefore apprehensive that the IEBC would gazette the name of the Claimant, thus excluding him from participation in the process. He also sought to impeach the decision of the 1<sup>st</sup> Respondent to issue the nomination to the Claimant herein, whereas the Claimant had resigned from the 1<sup>st</sup> Respondent and submitted his candidature as an independent candidate.
8. In support of the 2<sup>nd</sup> Respondent's application, a Supporting Affidavit dated 22 May 2017 to which was annexed a provisional certificate, a copy of his nomination certificate and a list of the 1<sup>st</sup> Respondent's nominees was submitted.

By a further Supporting Affidavit dated 25 May 2017, he annexed a letter dated 23<sup>rd</sup> May 2017 addressed to the 1<sup>st</sup> Respondent seeking a resolution of the matter through the internal party dispute resolution processes.

**Issues for Determination**

9. From a review of the 2<sup>nd</sup> Respondent's prayers, we find that the following issues commend themselves for determination:

- a. Whether the IEBC can be enjoined to the proceedings as a 3<sup>rd</sup> Respondent**
- b. Whether the 2<sup>nd</sup> Respondent ought to be declared as the duly nominated candidate for East Gem Ward**

**Analysis**

- a. Whether the IEBC can be enjoined to the proceedings as a 3<sup>rd</sup> Respondent**

10. The 2<sup>nd</sup> Respondent sought to have the IEBC enjoined as a 3<sup>rd</sup> Respondent to these proceedings. The Claimant's name having been submitted to IEBC, the 2<sup>nd</sup> Respondent was apprehensive that the proposed 3<sup>rd</sup> Respondent would proceed to gazette him as the 1<sup>st</sup> Respondent's nominee for the said electoral seat.

11. Section 40 of the Political Parties Act outlines the scope to which this Tribunal may exercise jurisdiction. The 2<sup>nd</sup> Respondent's prayer therefore cannot be granted and fails.

- b. Whether the 2<sup>nd</sup> Respondent ought to be declared as the duly nominated candidate for East Gem Ward**

12. The Claimant, having lodged his complaint with the Tribunal on 8 May 2017 has not taken steps to prosecute it since. In the meantime, whilst the matter was

pending before this Tribunal, the 2<sup>nd</sup> Respondent has been proceeding to develop his case within the party structures. He has adduced a letter evidencing his attempts to resolve the matter through the internal party processes in accordance with section 40 (2) of the Political Parties Act.

13. In addition, the 2<sup>nd</sup> Respondent is in possession of the provisional and final nomination certificates dated 26 and 29 April 2017 respectively. His frustration in securing his win is in the fact that the name of the Claimant has been forwarded to the IEBC by the 1<sup>st</sup> Respondent as its duly nominated candidate.

14. The Claimant has not been able to show that his alleged win has withstood the nomination processes within the 1<sup>st</sup> Respondent, whereas the 2<sup>nd</sup> Respondent has been able to show the same.

**Reliefs**

15. In light of the foregoing, we find that the Memorandum of Claim dated 8 May 2017 fails but the Notice of Motion filed on 22<sup>nd</sup> May 2017 succeeds and we direct as follows:

- a. That the 1<sup>st</sup> Respondent does proceed to present the name of the 2<sup>nd</sup> Respondent herein Samuel Otieno Siguru as the nominee for Member of the County Assembly, East Gem Ward.
- b. That notification issue to IEBC accordingly.
- c. That each party bear its own costs.

**Dated at NAIROBI this 18<sup>TH</sup> DAY of MAY 2017**

**1. M. O. Lwanga .....(Presiding Member)**

2. **Desma Nungo** ..... (Member)
3. **Paul Ngotho** ..... (Member)
4. **Dr. Adelaide Mbithi** ..... (Member)