



REPUBLIC OF KENYA

IN THE POLITICAL PARTIES DISPUTES TRIBUNAL AT NAIROBI

COMPLAINT NO. 293 OF 2017

CATHERINE MANZI KITHEKA.....CLAIMANT

-VERSUS-

DENNIS NYAMBOGA MAUTI.....1ST RESPONDENT

JUBILEE PARTY.....2ND RESPONDENT

JUDGMENT

Summary of the Complaint

1. The present complaint concerns the 2nd Respondent's nomination exercise for the position of Member of County Assembly, Majoge Basi Ward, Bomachoge Chache Constituency, Kisii County held on 26th April 2017.
2. The initial complaint in this matter was filed before this Tribunal by the 1st Respondent, Dennis Nyamboga Mauti, on 19th May 2017. He alleged that he was the winner of the nomination exercise but was yet to be issued with a nomination certificate. He claimed that despite his win, the 2nd Respondent forwarded the name of the Claimant to IEBC. The 1st Respondent further averred that he lodged a complaint before the 2nd Respondent's National Appeals Tribunal (IDRM) due to a letter he alleged was forged, purportedly withdrawing him from the race. The party's IDRM, in its decision dated 6th May 2017, found that it lacked jurisdiction to determine whether the letter was genuine or a forgery and forwarded the matter to the 2nd Respondent's National Elections Board (NEB). The IDRM however determined that the 1st Respondent was the winner of the

nomination exercise and directed that the nomination certificate be issued to him forthwith.

3. On 25th May 2017, the 1st Respondent withdrew his complaint before this Tribunal. However, Catherine Manzi Kitheka, now the Claimant before us, filed the present complaint dated 29th May 2017. She contends that the 1st Respondent withdrew from the race via a letter written and signed by him and that the 2nd Respondent subsequently issued her with the nomination certificate. She avers that upon withdrawal of the 1st Respondent's complaint before this Tribunal, the 2nd Respondent proceeded to forward his name to IEBC. Aggrieved, the Claimant has now approached this Tribunal seeking an order revoking and nullifying the 2nd Respondent's submission of the 1st Respondent's name to IEBC and for an order of substitution of his name with the Claimant's.
4. The Claimant in support of her submissions has adduced a copy of the 1st Respondent's letter purportedly withdrawing from the nomination exercise and a nomination certificate dated 9th May 2017 allegedly issued to her by the 2nd Respondent.

The 2nd Respondent's submissions

5. In reply, the Director of Legal Affairs of the Jubilee Party, MaryKaren KigenSorobit confirmed the 1st Respondent's win of the nomination exercise and averred that his withdrawal from the nomination exercise was based on a forged letter. She further averred that the 1st Respondent's win was confirmed by the party's IDRMM which directed the issuance of the nomination certificate to him. It is also the 2nd Respondent's contention that the party conducted independent investigations and confirmed that indeed the 1st Respondent had not withdrawn from the nomination exercise and the letter in question was a forgery. She therefore urged the Tribunal to dismiss the claim before it for lack of merit.

6. The 1st Respondent did not enter appearance in the matter despite service of the application on 30th May 2017.

Issue for determination

7. In our consideration, the two issues for determination are as follows:
 - a. *whether the Claimant is the duly elected nominee for the position of Member of County Assembly Majoge Basi Ward, Bomachoge Chache Constituency, Kisii County;*
 - b. *what reliefs should be granted, if any.*

Analysis

8. According to the submissions of the 2nd Respondent, the nomination exercise of 26th April 2017 proceeded as planned and the 1st Respondent emerged the winner with 1704 votes against the Claimant's 818 votes. In support of its assertions, the Respondent has attached the Returning Officer's declaration of results and polling results for four polling stations.
9. The Claimant took issue with the results for Bunyonge polling station which she states did not indicate the total number of valid votes, rejected votes, disputed votes and the total number of registered voters. She therefore prayed for the Tribunal to order a repeat exercise. A perusal of the results for Bunyonge Polling Station does confirm the Claimant's allegations. We however note that the Claimant has submitted no further evidence of irregularities at the polling station in question. Further that the Claimant in this polling station garnered 286 votes against the 1st Respondent's 191 votes. On this basis, the Tribunal is not convinced that the infraction alleged affected the outcome of the nomination exercise and therefore does not warrant a repeat of the exercise.
10. From the record before us, it is clear that the Claimant's main contention is that the 1st Respondent withdrew from the nomination exercise and as they were the

only two candidates in the race, she is the rightful nominee for the position of MCA for Majoge Basi Ward.

11. From the record before us, the letter in question was received by the 2nd Respondent on 26th April 2017, the day of the party's nomination exercise. The 2nd Respondent averred before this Tribunal that it did not award the nomination certificate to the 1st Respondent due to his alleged withdrawal from the nomination exercise. However, upon receiving a complaint from him and further investigations into the matter, the 2nd Respondent acknowledged the forged letter and forwarded the name of the 1st Respondent as its duly elected nominee.
12. The Claimant has mainly relied on the letter in question and her nomination certificate to support her claim. Upon consideration of the evidence before us and the submissions of all the parties, this Tribunal is convinced that the letter in question did not constitute a withdrawal from the nomination exercise by the 1st Respondent as properly determined by the 2nd Respondent. The Tribunal, with no further evidence to the contrary, stands guided by the determination of the IDRM and the submissions of the 2nd Respondent that the 1st Respondent was the winner of the nomination exercise and is therefore the party's duly elected nominee for the position of MCA, Majoge Basi Ward.

Orders

16. Consequently, the Claim dated 29th May 2017 is hereby dismissed with no orders as to costs.

DATED at NAIROBI this 8TH DAY of JUNE 2017

1. Kyalo Mbobu (Chairman)

2. Desma Nungo (Member)

3. Paul Ngotho (Member).....