



REPUBLIC OF KENYA
IN THE POLITICAL PARTIES TRIBUNAL AT NAIROBI
COMPLAINT NO 192 OF 2017

CHARLES O OKWEMBA.....COMPLAINANT

VERSUS

UNITED DEMOCRATIC PARTY.....1ST RESPONDENT

JOHNSTONE KASABA..... RESPONDENT

JUDGMENT

Introduction

1. The complainant is an aspirant for member of County Assembly, Wemilabi Ward, Luanda Constituency, Vihiga County. By his complaint dated, 9th May, 2017 he alleges that nominations were scheduled for 24th April, 2017, but were never held. Instead, they were postponed to an unknown date. He later realized that the 2nd Respondent had been given the nomination certificate without the nomination exercise having been conducted.
2. His attempts to approach the party bore no fruit. He impugns the decision as having been made without fair hearing. As a result he asks the Tribunal to order for repeat nominations. He also seeks an injunction restraining the 1st Respondent from awarding a nomination certificate to the 2nd Respondent.

Respondent's Case

3. The Respondents filed an affidavit sworn by Bernard Wafukho the 1st Respondent's Secretary General on 14th May, 2017. The Respondents admit that no nominations were conducted in Wemilabi Ward because only one candidate

met the qualifications stipulated in the party's constitution. In this regard, it is averred that the complainant did not fulfill requirements set out in the Party Nomination Rules and the IEBC Rules within the stipulated time.

4. As a result, the party had only one candidate who did not comply hence there was no need to conduct nominations.
5. The deponent also avers that the complainant delivered some of his documents belatedly on 26th April, 2017, while the party had set the deadline on 18th April, 2017. It was also averred that the complainant had not recruited 500 members to the party as required by party rules. It was further alleged that the complainant had not paid up his party life membership fees.

Analysis

6. This Tribunal will not, absent justifiable reasons, excuse a direct nomination where two or more candidates have been cleared to contest a party primary. In this regard, in *Complaint No 53 of 2017 Salah Yakub Farah v KANU National Elections Board & 2 others* we held that:

In view of the above, we hold that the Claimant having been cleared by the party had a legitimate expectation that the party would conduct primaries where he would get a fair chance to compete. We find that the 3rd Respondent violated the Claimant's legitimate expectation that nominations would be conducted when it purported to undertake a direct nomination while there were at least two candidates for the position of Member of National Assembly, Fafi Constituency. Moreover, under Article 47(2) of the Constitution and section 4 of the Fair Administrative Action Act, 2015 the party was expected to

inform the Claimant of the party's decision not to conduct any nomination exercise in Fafi Constituency.

7. We hold that the Respondents could not undertake a direct nomination where there were two aspirants anticipating competitive nominations. We have also not found the requirement to recruit 500 members in section 8.1 of the Respondent's constitution.
8. We have also found no evidence that the Claimant was ever informed of any of the reasons the Respondents have put forward as justification for failure to conduct party primaries. In *Complaint 170 of 2017 Harrison Mburu Gatumbi v Jubilee Party & 20 others* we held as follows:

The right to reasons is a constitutional right guaranteed in Article 47(2) and explicated by section 4(3) of the Fair Administrative Action Act, 2015. The Act requires that information on the nature of the administrative action together with prior and adequate reasons must be given to the person whose rights are affected. Reasons for decisions by political parties are not only a part of the principles of natural justice and fairness, but also enable an affected party member to know the possibility of and grounds for potential appeal to this Tribunal. Reasons also enable this Tribunal to have a better appreciation of the decision thus conduct a better appeal or review.

9. Further, having taken his application fees and not informed him otherwise, the Respondents created in the Claimant, a legitimate expectation that party primaries would be conducted. They violated that legitimate expectation by undertaking a direct nomination without informing the complainant of that decision.

Reliefs

10. We allow this complaint and make the following orders:
- a) A declaration be and is hereby issued to the effect that the 1st Respondent failed to conduct free and fair nominations for the position of member of County Assembly, Wemilabi Ward, Luanda Constituency, Vihiga County.
 - b) A declaration be and is hereby issued to the effect that the purported direct nomination as well as the certificate of nomination dated 2nd May, 2017, issued by the 1st Respondent to the 2nd Respondent, is null and void and of no effect in law
 - c) An order be and is hereby issued directing the 1st Respondent to conduct a nomination exercise for the position of member of County Assembly, Wemilabi Ward, Luanda Constituency, Vihiga County within the next 48 hours of our judgment.
 - d) The 1st Respondent shall bear the Claimant's costs of this complaint.

Dated at Nairobi this 15TH day of MAY 2017

Kyalo Mbobu

(Chairperson)

James Atema

(Member)

Hassan Abdi

(Member)