



REPUBLIC OF KENYA

IN THE POLITICAL PARTIES DISPUTES TRIBUNAL AT NAIROBI

COMPLAINT NO. 186 OF 2017

CLEMENT OTIENO MAGAGA1ST COMPLAINANT
DANIEL OMONDI.....2ND COMPLAINANT
MAURICE OMONDI OTEDO.....3RD COMPLAINANT
LILIAN AKINYI ODONGO.....4TH COMPLAINANT
OJJO TOLA.....5TH COMPLAINANT
JAMES OTIENO OGOLA.....6TH COMPLAINANT
FRANCIS OTIENO NGESA.....7TH COMPLAINANT

-VERSUS-

ODM ELECTIONS BOARD.....1ST RESPONDENT
SPECIAL COUNTY APPEALS TRIBUNAL.....2ND RESPONDENT
GEORGE OMONDI OMUTHO.....INTERESTED PARTY

AS CONSOLIDATED WITH
COMPLAINT NO. 149 OF 2017

DANIEL ORIA ODHIAMBO.....COMPLAINANT

VERSUS

ORANGE DEMOCRATIC PARTY.....1ST RESPONDENT
GEORGE OMONDI OMUTHO.....2ND RESPONDENT

JUDGMENT

Summary of the Complaint

[1] The Orange Democratic Party (ODM) conducted a nomination exercise for the position of Member of County Assembly for Dandora Ward 4/5, Embakasi North Constituency, Nairobi County, that were held on 30th April 2017. Violence erupted during the nomination exercise and the Returning Officer did not announce a winner. The ODM party proceeded to issue Daniel Oria Odhiambo, one of the aspirants and the

Complainant in Complaint No. 149 of 2017, with an interim nomination certificate dated 30th April 2017.

[2] Aggrieved, one of the aspirants, Mr. George Omondi Omutho, filed an appeal at the ODM Special County Appeal Tribunal (hereinafter referred to as the party's IDRMM) challenging this outcome. In its decision dated 6th May 2017, the IDRMM dismissed the appeal due to insufficient evidence and upheld the issuance of a nomination certificate by the party to Daniel Oria Odhiambo. Dissatisfied with this decision, the seven Complainants are seeking redress before this Tribunal. Further, Daniel Oria Odhiambo is also before this Tribunal in Complaint No. 149 of 2017 seeking this Tribunal to order the party to issue a nomination certificate to him as directed by the party's IDRMM.

Issues for determination

[3] We have isolated the following issues for determination:

- a) *Whether the nomination exercise for Dandora Ward 4/5, Embakasi North Constituency was credible, free and fair and conducted in accordance with the Constitution, the relevant statutory provisions and the political party (ODM) Election and Nomination rules.*
- b) *Whether the nomination certificate should be issued to Daniel Oria Odhiambo.*

Analysis and determination

[4] The seven Complainants in their Notice of Motion dated 9th May 2017, have submitted that the nomination exercise of 30th April 2017 was marred with violence and therefore it was impossible to determine conclusively who won. The Interested Party, who was also an aspirant in the exercise, supported these allegations and submitted that the Returning Officer did not make an official announcement of the results as required under Rule 18.8 of the ODM Election and Nomination Rules.

[5] The party's IDRMM further identified several irregularities in the nomination process which supports the above assertions that the exercise was flawed and inconclusive. However, according to the averments of the seven complainants, after the failed nomination exercise, the aspirants involved had collectively agreed in a meeting held at Orange House on 1st May 2017 on a means of nominating one of them based on an agreed set of standards. The attendees of this meeting have been adduced before us. In a surprise turn of events, the party then issued a provisional nomination certificate to

Daniel Oria Odhiambo. This Tribunal is therefore persuaded based on the record before us that the aspirants and the party had agreed on a way forward, in the interests of all the parties involved, and that the awarding of a nomination certificate to Daniel Odhiambo Oria was done contrary to this agreement.

[6] We have also not been shown according to which party process the Party awarded a provisional certificate to the said Daniel Odhiambo.

Orders

[7] The Tribunal finds that the nominations which were carried out on 30th April 2017 were irredeemably flawed since they did not yield a nominee. The Statement of Claim dated 8th May 2017 in Complaint No. 149 of 2017 is hereby allowed. However, the prayers as framed cannot be not granted. Consequently, the Tribunal's orders are as follows:

1. The Notice of Motion dated 9th May 2017 in Complaint No. 186 of 2017 is allowed to the extent that the Orange Democratic Movement is, in order to achieve justice in this case, hereby ordered to forthwith carry out repeat nomination elections for Member of County Assembly for Dandora Ward 4/5 in Nairobi County on or before 16th May 2017.
2. No order as to costs.

DATED and DELIVERED AT NAIROBI this 12TH DAY of MAY 2017

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