



THE REPUBLIC OF KENYA
IN THE POLITICAL PARTIES DISPUTES TRIBUNAL AT NAIROBI
COMPLAINT 131 OF 2017

CLEOPHUS MULI SALU.....COMPLAINANT

VERSUS

NATIONAL ELECTIONS BOARD,

WIPER DEMOCRATIC MOVEMENT.....1ST RESPONDENT

THADDEUS KITHUA NZAMBIA.....2ND RESPONDENT

JUDGMENT

Background

1. The present Complaint relates to the 1st Respondent's nominations for Member of the National Assembly, Kilome Constituency, Makueni County held on 25 April 2017. The Claimant approached this Tribunal by way of a Notice of Motion dated 10 May 2017. She sought to have the nomination certificate issued to the 2nd Respondent in respect of the nomination for Member of the National Assembly, Kilome Constituency, Makueni County nullified and that the final nomination certificate in respect of the said electoral seat issued to the 1st Respondent.
2. The Claimant contended that the exercise had been marred with irregularities perpetrated by the 2nd Respondent. By a letter dated 26 April 2017, the Claimant lodged a complaint with the 1st Respondent's National Appeals Tribunal which was pending hearing at the time of approaching the Tribunal.

3. It was also the Claimant's contention that the 1st Respondent had issued two Notifications of Election Result: one to the Claimant and the other to the 2nd Respondent notifying each of them that they had won the nomination for the said electoral seat. However, the 1st Respondent had proceeded to issue the nomination certificate to the 2nd Respondent.
4. There was no appearance for the 1st Respondent, and no responses were filed to the Complaint. However, at the hearing of the Complaint, the Claimant was absent and counsel for the 1st Respondent prayed that it be dismissed. He contended that the 1st Respondent's internal party dispute resolution mechanism had not been exhausted by the Claimant since the letter dated 26 April had never been received and contended that the notification of election result issued to the Claimant was not legible. The 1st Respondent prayed that the Complaint be dismissed with costs.

Issues for Determination

5. After reviewing the material on record and hearing the 1st Respondent, it seems to us the only issue for determination is whether the 1st Respondent should be compelled to issue a final nomination certificate to the Claimant as prayed.

Analysis

6. The Respondents did not refute the allegations by the Claimant that two Notifications of Election Result were issued in respect to the said nomination exercise. Neither did they controvert the evidence of irregularities supplied by the Claimant. On a balance of probabilities, the Claimant has shown that there were some irregularities during the nomination exercise conducted on 25 April 2017.

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7. The Claimant has also shown the outcome of the process was indeterminate as to the nomination certificates were issued the Claimant dated 3 May 2017 and to the 2nd Respondent dated 4 May 2017. In addition, the Claimant has satisfied this Tribunal that he attempted to have this issue determined by the party. The Claimant supplied a letter and a receipt to that effect.
8. The Claimant gave an opportunity to the Respondents to clarify issues and yet they did not defend themselves, despite service.

Orders

9. In the circumstances, the claim dated 5 May 2017 succeeds. We are however unable to grant the prayers as framed. Nevertheless, we direct as follows:
 - a. That the 1st Respondent do forthwith conduct a fresh nomination exercise in accordance with the party's constitution and rules whilst taking into consideration the interests of all the aspirants.
 - b. No orders as to costs.

Dated at NAIROBI this 12th DAY of MAY 2017

- 1. M. O. Lwanga (Presiding Member)**
- 2. Desma Nungo (Member)**
- 3. Paul Ngotho (Member).....**

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4. Dr. Adelaide Mbithi (Member)