



REPUBLIC OF KENYA
POLITICAL PARTIES DISPUTES TRIBUNAL
COMPLAINT NO. 157 OF 2017

CORNELIUS KIPKOECH RUGUTCOMPLAINANT

-VERSUS-

KENYA NATIONAL AFRICAN UNION.....RESPONDENT

JUDGMENT

Summary of the Complaint

[1] The Complainant in his complaint dated 8th May 2017 submits that the Respondent scheduled a nomination exercise for 26th April 2017 for the position of Member of County Assembly for Songhor-Soba Ward, Tindiret Constituency. The nomination exercise was never conducted and the Complainant avers that the Respondent is alleged to have awarded the nomination certificate to a third party, details of which they have not disclosed. Aggrieved, the Complainant attempted to lodge a complaint with the Respondent which was turned away on the basis that the time for filing complaints had lapsed. The Complainant has now approached this Tribunal seeking an order compelling the Respondent to withdraw any nomination certificate as issued and to conduct a nomination process.

Response

[2] The Respondent disputed the Complainant's allegation that there was a nomination exercise scheduled for 26th April 2017 and submitted that the Complainant has not placed any material before this Tribunal to prove this allegation. The Respondent further argued that the complaint is premature as the Complainant has not attempted to canvass his dispute through the party's internal dispute resolution mechanism (IDRM) process in compliance with section 40(2) of the Political Parties Act No. 11 of 2011.

[3] In its Replying Affidavit filed on 13th May 2017, the Respondent argued that the complaint fails on the grounds that the Respondent reserves the right to directly nominate candidates to a position as stipulated under Article 24(9) of the KANU Constitution (Revised 2012) and Part 5 paragraph 6 of the KANU Nomination Rules (Amended 2017). The Complainant as a member of the party is therefore bound by these provisions.

Analysis and Determination

[4] We refer to the Complainant's letter dated 7th May 2017 addressed to the Respondent on the issue in dispute and we are satisfied that the Complainant attempted to canvass his dispute before the party's IDRM in compliance with section 40(2) of the Political Parties Act No. 11 of 2011.

[5] In the circumstances, it is clear that the sole issue for determination, is *whether or not the direct nomination of a candidate by the Respondent for the position of Member of the County Assembly for Songhor-Soba Ward, Tindiret Constituency in Nandi County was in compliance with the party constitution, rules and regulations.*

[6] It is undisputed that the Respondent has the power to directly nominate a candidate of its choice. Article 24(9) of the Respondent's Constitution and Part 5

paragraph 6 of the Nomination rules provide for direct nomination of a candidate provided nomination by voting has not taken place. It further provides that where only one candidate has applied and is cleared by the National Elections Board, then such candidate shall be declared the party nominee with the approval of the National Executive Council. Where there are two or more persons, then nomination will be by secret ballot.

- [7] Looking at the record before this Tribunal, it is apparent that the Complainant and such other third party as alleged to be entitled to direct nomination as averred by the Respondent were interested in the same seat. The evidence presented before this Tribunal by both parties seems to suggest that the Complainant and possibly another contender were interested in becoming nominees of the Respondent for the position in issue.
- [8] The Respondent has however not tendered any names or information as to the details of such other contender for the said position and as such the only evidence before the Tribunal that a member had tendered his documents for consideration remains that of the Complainant.
- [9] In light of this analysis, the Respondent's powers to make a direct nomination under Article 24(9) of the party Constitution could only be in favour of the Complainant. Any other circumstance would have required that a competitive process apply.

Orders

As a consequence, we make the following orders:

- a) **THAT** the Statement of Claim dated 8th May 2017 hereby succeeds;
- b) **THAT** the Respondent be and is hereby ordered to issue to the Complainant a final nomination certificate for the position of Member of County Assembly for Songhor-Soba Ward, Tindiret Constituency in Nandi County forthwith;

- c) **THAT** the Respondent be and is hereby ordered to present the name of the Complainant to the Independent Electoral Boundaries Commission as the party nominee for the position of Member of County Assembly for Songhor-Soba Ward, Tindiret Constituency in Nandi County forthwith;
- d) No order as to costs.

DATED and DELIVERED AT NAIROBI this 13TH DAY of MAY 2017

1. M. O. Lwanga (Presiding Member)

2. Desma Nungo (Member)

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

4. Dr. Adelaide Mbithi (Member)