



**THE REPUBLIC OF KENYA  
IN THE POLITICAL PARTIES DISPUTES TRIBUNAL AT NAIROBI  
COMPLAINT 287 OF 2017**

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**CRISPINUS PEGGA BARASA..... CLAIMANT**

**VERSUS**

**JUBILEE PARTY OF KENYA..... RESPONDENT**

**JUDGMENT**

1. The present Complaint relates to the 1<sup>st</sup> Respondent's nominations for Member of the County Assembly, South Bukusu Ward, Bumula Constituency, Bungoma County. It is the Claimant's contention that no nomination exercise took place in respect of Bukusu Ward, despite his having paid nomination fees in anticipation of engaging in a competitive process.
2. He further contended that no nomination certificate was issued by the 1<sup>st</sup> Respondent's deputy party leader, Mr William Ruto on 14 May 2017 when nomination certificates were issued for other aspirants vying under the umbrella of the Respondent. The Claimant further asserted that on 17 May 2017, a member of the Respondent's National Election Board indicated, through a local radio station, that the nomination certificate in respect of Bukusu Ward would be issued to Mr Isaiah Busolo Sudi, despite no voting having taken place. He therefore seeks an order directing the Respondent to not issue a nomination certificate to the said Isaiah Busolo Sudi and that the Respondents be directed to conduct a fresh nomination exercise for the said electoral seat.
3. In support of his claim, he attached his appeal to the party, being Appeal No. 120 of 2017 dated 27 April 2017 and received by the party on 28 April 2017 as well as a letter to the Respondent dated 27 April 2017 requesting that the nomination be conducted. He also supplied a receipt

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in acknowledgment of his nomination fees and a duly executed candidate registration form issued on 23 January 2017 as well as an acknowledgement letter indicating that his nomination documents had been received dated 8 March 2017.

4. In reply, the Respondent, via an affidavit sworn by its counsel, contended that the present Complaint was a nonstarter since the Respondent had already submitted a list of its candidates to the Independent Electoral and Boundaries Commission (IEBC) save for the parties who were already before the Tribunal as at 10 May 2017.
5. It was further contended for the Respondent that the Claimant had acted in bad faith by approaching the Tribunal without disclosing the fact that he had lodged an appeal with the Respondent's National Appeals Tribunal (NAT), but had failed to prosecute the same. Consequently, the same had been determined in his absence. It was therefore their position that the Claimant's assertion that the NAT had declined to hear the matter was untrue as it was not backed by any written communication.
6. It was therefore the Respondents' contention that the Claimant had not satisfied the Tribunal, on a balance of probabilities, that the NAT decision was flawed. Consequently, they prayed that the Claim be dismissed.

### **ISSUES FOR DETERMINATION**

7. From the record before us, it appears that two issues arise for determination:
  - a. Whether the 1<sup>st</sup> Respondent conducted nominations for Member of the County Assembly, Bukusu Ward, Bungoma County
  - b. Whether the Claimant is entitled to the reliefs sought.

### **ANALYSIS**

- a. Whether the 1<sup>st</sup> Respondent conducted nominations for Member of the County Assembly, Bukusu Ward, Bungoma County**

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8. As stated above, the Claimant's main contention is that there was no nomination exercise carried out, despite his having paid the requisite fees. This allegation has not been controverted by the Respondents. The Claimant having alleged that no nomination was carried out, nothing would have been easier than for the 1<sup>st</sup> Respondent to supply the outcome of the said nomination exercise as proof of their conduct of the same. Moreover, the 1<sup>st</sup> Respondent, having cleared the Claimant to participate in the process, was bound to act in good faith towards him by conducting the said exercise.
9. The Claimant has demonstrated that he attempted to engage the party's internal dispute resolution mechanism to resolve the issue. He asserted that the appeal was not heard. The Respondents assert that there was a conclusive determination of the matter. However, the Respondents also did not supply any proof that the matter was conclusively determined as averred. If indeed a decision was made by NAT, nothing would have been easier than for the Respondent to supply the same. It therefore appears that the Respondent is merely trying to circumvent the issues raised by the Claimant without assisting the Tribunal in getting to the bottom of the dispute.
10. While the Tribunal seeks to strengthen the internal party processes, it should not uphold decisions of such mechanisms where they are designed to frustrate candidates who have duly complied with the party election and nomination rules as it is clear that the Claimant has. The Claimant has cast doubt as to the conduct of the nomination exercise, which has not been dispelled by the Respondents.

### **b. Whether the Claimant is entitled to the reliefs sought.**

11. The Respondent alleges that the Claimant's complaint is futile since the list of nominees has already been submitted to the IEBC. It appears to us that they contend that we are time barred and our hands are tied in respect of the reliefs we can grant. However, we are convinced that there

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is still a live dispute pending between the Claimant and the Respondent. No proof was supplied by the Respondents of the person duly nominated and whose name was forwarded to the IEBC. We are therefore guided by the decision of Onguto J in *Eric Kyalo Mutua v Wiper Democratic Movement & Anor* High Court Election Appeal 4 of 2017 at para 77:

*...the IEBC timelines cannot bind the dispute resolution process being undertaken by independent organs established under the Constitution. The PPDT and this court may not be held hostage by the timelines set purely for administrative purposes so long as the dispute is still alive and before the two bodies constitutionally mandated to resolve political disputes. Only statutory timelines may direct this court whilst determining a matter. This court as well as the PPDT will not be swayed into declining a complaint or dispute simply because the parties are set to be caught up with time set by the IEBC which may itself fly in the face of statutory timelines. Disputes will be determined on their merits and all factors considered including the timelines and appropriate orders made as each case may be deserving of.*

**ORDERS**

12. We find that the claim succeeds. However, the prayers as sought in the claim cannot be granted. In light of the foregoing, we order as follows:-

- (a) The Respondent award the nomination certificate for Member of the County Assembly, Bukusu Ward, Bungoma County to the Claimant.
- (b) We direct that each party to bear its own costs.

Dated at **NAIROBI** this .....**25<sup>TH</sup>** ..... **DAY** of **MAY** 2017

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