



REPUBLIC OF KENYA
IN THE POLITICAL PARTIES TRIBUNAL AT NAIROBI
COMPLAINT NO. 144 OF 2017

DAVID OBONYO MIRERI COMPLAINANT

VERSUS

ORANGE DEMOCRATIC MOVEMENT 1ST RESPONDENT

EVE OBARA 2ND RESPONDENT

AND

PROF. RICHARD OTIENO MUGA INTERESTED PARTY

JUDGMENT

Summary of the case

1. This Complaint streams from the ODM Party primaries nomination held on 24th April, 2017 for the selection of the party's candidate for Member of National Assembly, Kabondo/Kasipul Constituency. The Complainant submits that no tallying took place at the Got Rateng Secondary School Tallying Centre as the incumbent Member of Parliament, Hon. Silvance Onyango Osele, raided the place with Armed GSU personnel who harassed everyone and barred election officials from exercising their mandate. That Hon. Osele forced the Returning Officer to declare him the winner and issue him with a provisional certificate under duress. He avers that going by the tally by his agents, he had won by over 8,000 votes with the 2nd Respondent a distant second with 4, 000 votes.

David Obonyo Mireri v Orange Democratic Movement & 2 Others [2017]
eKLR

2. Aggrieved by the actions of Hon Osele, the Complainant filed an appeal with the 1st Respondent's County Appeals Tribunal (CAT) on 27th April, 2017. The decision was delayed but finally delivered on 4th May, 2017 but while that ruling was still pending, the 2nd Respondent, Eve Obara was issued with a provisional nomination certificate. He prays for a declaration that the provisional certificates held by both the incumbent MP and the 2nd Respondent were irregularly obtained and are therefore null and void. He urges that the 1st Respondent be ordered to issue him with a nomination certificate, or in the alternative, the 1st Respondent be ordered to organize and conduct a fresh nomination exercise in Kabondo/Kasipul Constituency within 48 hours.
3. The Party, the 2nd Respondent, filed a Replying Affidavit and Statement of Defence. It accuses the Complainant of raiding the Tallying Centre in an attempt to disrupt the exercise by discharging his firearm twice. It is her submission that tallying took place at Got Rateng Secondary School and she was declared the winner and issued with a provisional nomination certificate. She gave a tally of the results announced by the Returning Officer as follows: *Eve Akinyi Obara, 7191; Sylvance Osele 5296; Prof. Richard Otieno Muga 3947 and David Obonyo Mireri 1632* (top four). She also blamed Hon. Osele for causing the fracas. She submits that results for all candidates were announced at the Tallying Centre.
4. An affidavit by Jotham Okidi, the Returning Officer also places Hon. Osele in the middle of the violence. The affidavit also confirms the tally of results as stated by the 2nd Respondent. He concedes announcing Mr. Osele as the winner and issuing him a provisional certificate, but all this was done under duress. He finally announced the true results declaring the 2nd Respondent the winner and issued her with a provisional nomination certificate. He states that the Complainant came a distance fourth in the final tally.

David Obonyo Mireri v Orange Democratic Movement & 2 Others [2017]
eKLR

5. Unfortunately, the 1st Respondent did not appear in this matter. He would have added value to these proceedings. However, thanks to the Interested Party, Prof. Richard Otieno Muga, we were able to peruse the decision of the NAT delivered on 5th May, 2017.

Issues for determination

6. The only issue for determination is the question, who is the duly nominated ODM party candidate for the position of Member of National Assembly, Kabondo/Kasipul Constituency.

Determination

7. It is evident upon perusal of the record and particularly the NAT decision that violence and election malpractices were committed at Got Rateng Secondary School Tallying Centre. In the appeal before the NAT, the main grievances were directed at the sitting MP Hon. Osele for having interfered with the exercise. Evidently, Hon. Osele has left the party and is now an Independent candidate as evident on record from Registrar of Political Parties. It is also evident that all parties were heard and at one time the NAT reviewed and set aside its decision to accommodate all parties.
8. Strikingly, the NAT found that: *“there was near unanimity by the aspirants that the polling process was largely peaceful save for some incidents at Ringa Primary School. The only issue most aspirants had was with the tallying process which they felt had been overtaken by agents of Hon. Osele and that some aspirants and their agents were denied access to the same. It was their contention that the returning officer was forced to declare certain results which were being handed over to him by Hon. Osele’s agents.*
9. As to how the 2nd Respondent was finally awarded the certificate, the NAT stated: *“Ms. Obara on her part did inform us that the returning officer called her after the process at*

David Obonyo Mireri v Orange Democratic Movement & 2 Others [2017]
eKLR

the tallying centre and informed her that according to the preliminary results he had before he was forced to announce Hon. Osele the winner, Ms. Obara was the leading one. She informed us that the returning officer issued her with that certificate based on that information."

10. It then made the following orders:

"(a) that the provisional certificates held by Ms. Eve Obara and Hon. Silvanse Osele be and are hereby withdrawn;

(b) That the party to proceed and determine a party nominee for Kabondo Kasipul Constituency Parliamentary elections in a manner that is consistent with the Party constitution, Nomination and Election rules."

11. No sufficient grounds have been given for impugning the NAT decision. We note that the NAT withdrew the first provisional certificates issued to Eve Obara and Hon. Osele. Hence, there is nothing worth revoking in regard to Hon. Osele. It was submitted that the provisional certificate Ms Obara currently holds was given to her after the delivery of the NAT decision. Hence, it was issued by the party in compliance with order (b) of the NAT decision. Accordingly, we find that the Complainant has not given sufficient evidence to warrant the certificate being revoked.

12. We make the following orders:

- (i) Statement of Claim contained dated 8th May, 2017 is dismissed.*
- (ii) The nomination certificate issued by the 1st Respondent to the 2nd Respondent is hereby affirmed.*
- (iii) Each party shall bear its own costs.*

**David Obonyo Mireri v Orange Democratic Movement & 2 Others [2017]
eKLR**

13. Orders accordingly.

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

Kyalo Mbobu

Chairman

James Atema

Member

Hassan Abdi

Member