



REPUBLIC OF KENYA
IN THE POLITICAL PARTIES DISPUTES TRIBUNAL AT NAIROBI
COMPLAINT NO. 76 OF 2017

DAVID OCHIENG BABU.....CLAIMANT/APPLICANT

VERSUS

ORANGE DEMOCRATIC MOVEMENT.....1ST RESPONDENT

OKAL OPIYO.....2ND RESPONDENT

LORNA ACHIENG OCHIENG.....INTERESTED PARTY

JUDGMENT

A. Complaint.

[1] The complainant, in his Complaint dated 5th May 2017, asserts that he contested in the party primaries of the 1st respondent for member of County Assembly of North Sakwa Ward in Bondo Constituency within Siaya County. He contends that the said election exercise was unfair, results at the constituency tallying centre were withheld for all aspirants but the incumbent, gunshots were fired wantonly by the agent of the interested party which caused uncertainty and unverified results. Thus, he contends that the exercise was in contravention of Articles 91 and 92 of the Constitution of Kenya, the party rules and regulations as well as election laws.

[2] As a result of the above, complainant seeks for this Tribunal to compel the respondent to be compelled to produce the declaration forms for scrutiny and tallying from each polling station; the respondents to produce the results of the missing polling stations and added to the total votes; declare the nominee as winner upon scrutiny and addition of votes from the missing stations and the winner be issued and awarded the party certificate.

B. Response

[3] The interested party opposed this complaint through grounds of opposition dated 8th May 2017. He challenged this Tribunal's jurisdiction to entertain the complaint as the complainant has not exhausted the parties Internal Dispute Resolution Mechanism (IDRM). He urged that the complaint was an abuse of the court process thus warranting dismissal.

C. Issues for determination

[4] The issue that emerges for determination is *whether this tribunal has jurisdiction to entertain this claim.*

D. Analysis and determination

[5] Section 40 (2) of the Political Parties Act is categorical that for this Tribunal's jurisdiction to be invoked, the party internal dispute resolution mechanisms (IDRM) MUST have been first invoked.

[6] At the hearing, the complainant alleged that on being aggrieved by the nomination exercise decision, he sought to lodge an appeal with the first respondent. He was instructed to leave the complaint with a receptionist in a hotel - Mwalimu SACCO in Siaya. He did not tell us who instructed him. There is an appeal letter on record but it does not bear a party stamp of receipt or even an acknowledgement receipt that the said secretary received it on behalf of the 1st respondent. He did not satisfy us that that he invoked IDRM. Therefore, and in compliance with section 40 (2) of the Political Parties Act we must down our tools.

E. Reliefs

[7] Accordingly, the complaint dated 5th May, 2017 is dismissed.

DATED AT NAIROBI THIS 9th DAY OF May 2017.

1. Milly Odongo**Presiding Member**
2. Paul Ngotho**Member**
3. Dr. Adelaide Mbithi.....**Member**
4. Desma Nungo.....**Member**

