



REPUBLIC OF KENYA  
POLITICAL PARTIES DISPUTES TRIBUNAL  
COMPLAINT. NO. 72 OF 2017

DIANA LUKOSI.....COMPLAINANT

VERSUS

KENYA AFRICAN NATIONAL UNION PARTY.....1<sup>ST</sup> RESPONDENT

KILIMO STANLEY KORE.....2<sup>ND</sup> RESPONDENT

JUBILEE PARTY.....INTERESTED PARTY

**JUDGMENT**

**Summary of case**

1. The Complainant through a Petition filed on 5<sup>th</sup> May 2017 is aggrieved by the conduct of the 1<sup>st</sup> Respondent in relation to the nomination exercise for the position of Senator, Trans-Nzoia County. The complainant avers that she is a life member of the 1<sup>st</sup> Respondent and was an unopposed candidate of the 1<sup>st</sup> Respondent having been informed as such upon being cleared for a nomination exercise that was slated for 28<sup>th</sup> April 2017.
2. The Complainant further avers that the 1<sup>st</sup> Respondent published in the Kenya Gazette the Complainant among its contestants for the said position while at the same time the 2<sup>nd</sup> Respondent was published as a contestant in Kenya Gazette as a member of the Interested Party. In essence, the Complainant avers 2<sup>nd</sup> Respondent is party hopping against the laws and is thus ineligible to be the 1<sup>st</sup> Respondent's nominee. The Complainant is therefore aggrieved that the 1<sup>st</sup>

Respondent has since issued a nomination certificate in favour of the 2<sup>nd</sup> Respondent as a direct nominee in total disregard of the Complainant's expressed intent to participate. The Complainant's attempts to have the matter resolved within the party has not borne fruit as her complaint letters and visits to the party have been ignored.

*The Response*

3. The 1<sup>st</sup> Respondent filed a Replying Affidavit on 11<sup>th</sup> May 2017 sworn by its Chairman of the Election Board, Edward Kivuvani. The 1<sup>st</sup> Respondent maintains that it has powers under Article 24(a) of its Constitution (revised in 2012) to nominate a member as a candidate and under Article 24(8) and (10) of the Party Constitution which empower the 1<sup>st</sup> Respondent to give a direct nomination to a sole candidate. The 1<sup>st</sup> Respondent submits that it acted in a proper manner and refutes that the Complainant was promised a direct nomination.
4. The 1<sup>st</sup> Respondent also argues that the 2<sup>nd</sup> Respondent had defected from the Interested Party long before the ruling to block out party hoping was delivered and that there was no conclusive evidence to demonstrate that the 2<sup>nd</sup> Respondent is a member of the Interested Party. The 1<sup>st</sup> Respondent also refutes that its National Election Board had cleared the Complainant to participate in the nomination exercise as she had not fully complied with the requirements of the party's Constitution. They further note that the Claimant has not exhausted the mandatory internal dispute resolution mechanism as per Article 21 of the 1<sup>st</sup> Respondents Constitution read together with Section 40(2) of the Political Parties Act.
5. The Interested Party appeared in the proceedings but took no position on the issue for determination.

*Issues for determination*

6. The Tribunal has framed the following issues for determination.

*a) Whether the Tribunal has jurisdiction over this dispute.*

*b) Whether the 1<sup>st</sup> Respondent should issue a nomination certificate to the complainant as the unopposed candidate.*

*a) Whether the Tribunal has jurisdiction over this dispute.*

7. The Tribunal's jurisdiction over disputes between a political party and its member and over party primaries are set out in Section 40(1)(b) and (fa) of the Political Parties Act respectively. The Tribunal has appreciated the importance of a party member to resolve disputes through the existing party internal dispute resolution mechanism before approaching the Tribunal. The Tribunal takes the position that the party member has to satisfactorily demonstrate that he/she made an attempt to raise and address the dispute with the party, upon which the Tribunal exercises its jurisdiction. The Tribunal is satisfied that the Complainant has made sufficient efforts as set out in her affidavit and find that Tribunal is properly seized of the complaint.

*b) Whether the 1<sup>st</sup> Respondent should issue a nomination certificate as the unopposed candidate.*

8. The 1<sup>st</sup> Respondent is entitled to field a candidate for the position of Senator, Trans-Nzoia county. This is both under the Provisions of Article 38 of the Constitution and Article 24 (a) of the 1<sup>st</sup> Respondent's Constitution (Revised 2012). As we held in PPDT Complaint No. 53 of 2017 Yakub Salah –vs- KANU and PPDT Complaint Nos.122,123,128 and 128 of 2017 Nyangweso Alfred

Akunga & 4 others v Jubilee Party of Kenya (as consolidated), the moment a political party clears aspirants, the aspirants and their supporters have a legitimate expectation that a competitive nomination exercise would take place. This was further buttressed by the Kenya Gazette publication which indicated that the Complainant and the 2<sup>nd</sup> Respondent as the aspirants cleared to participate in the nomination exercise. The Complainant has produced her clearance certificate from the 1<sup>st</sup> Respondent's National Elections Board. The 1<sup>st</sup> Respondent has not controverted this and as such we respectfully disagree with the 1<sup>st</sup> Respondent that it had not cleared the Complainant.

9. The question as to the eligibility of the 2<sup>nd</sup> Respondent to participate in the 1<sup>st</sup> Respondent's nomination also arose before the Tribunal. The Complainant submits that the 2<sup>nd</sup> Respondent is a member of the Interested party and is thus precluded from party hopping under section 14(5) and 14(1) of the Political Parties Act as interpreted by the High Court in Council of County Governors v Attorney General & Another [2017] eKLR. The Kenya Gazette publication by both the 1<sup>st</sup> Respondent and the Interested Party list the 2<sup>nd</sup> Respondent among its nominee for the position of Senator, Trans-Nzoia County under which this occurrence the Interested Party made no submissions.
10. We have considered the letter of resignation dated 4<sup>th</sup> April 2017 produced by the 1<sup>st</sup> Respondent in which the 2<sup>nd</sup> Respondent resigned from the Interested Party. The letter has been acknowledged as received by the office of the Registrar of Political Parties. This in our view is sufficient confirmation that the 2<sup>nd</sup> Respondent was no longer a member of the Interested Party. The 1<sup>st</sup> Respondent has also adduced Gold Membership status to the 2<sup>nd</sup> Respondent. From the evidence presented, it is clear that even though the 2<sup>nd</sup> Respondent was at one

time a member of the Interested Party, he had resigned. It is also shown that the 2<sup>nd</sup> Respondent is a gold member of the 1<sup>st</sup> Respondent.

11. The evidence presented before the Tribunal does not support any allegation that the 2<sup>nd</sup> Respondent was by virtue of membership barred from participating in party activities of either the 1<sup>st</sup> Respondent or the Interested Party. We also note that although the 2<sup>nd</sup> Respondent had been duly gazette by both parties, the said Gazette copies were of different dates.

***Orders***

12. In the circumstances, we are unable to grant the reliefs as framed in the Petition dated 3<sup>rd</sup> May 2017. We nevertheless direct as follows:

- a) The Nomination Certificate issued by the 1<sup>st</sup> Respondent to the 2<sup>nd</sup> Respondent be and is hereby nullified.
- b) The 1<sup>st</sup> Respondent do conduct a fresh nomination exercise for the position of Senator, Trans-Nzoia County in accordance with the party Constitution and rules taking into consideration the interests of the Complainant and the 2<sup>nd</sup> Respondent together with the party members.
- c) Notice to issue to Independent & Electoral Boundaries Commission.
- d) No order as to costs.

**DATED IN NAIROBI THIS 12<sup>TH</sup> DAY OF MAY, 2017.**

**1. M. O. Lwanga ..... (Presiding Member)**

**2. Paul Ngotho.....(Member)**

3. **Dr. Adelaide Mbithi .....(Member)**