



REPUBLIC OF KENYA
POLITICAL PARTIES DISPUTES TRIBUNAL
COMPLAINT NO. 208 OF 2017

DUNCAN OCHIENG' OLUOCH.....1ST COMPLAINANT

HASSAN NYAMAI MUSA.....2ND COMPLAINANT

VERSUS

ORANGE DEMOCRATIC MOVEMENT.....1ST RESPONDENT

ELIZABETH AKINYI MANYALA.....2ND RESPONDENT

JUDGMENT

Summary of the Case

1. The Claimants disputed the decision of 1st Respondent of issuing the 2nd Respondent with the final nomination certificate despite the 1st Respondent's nomination process being marred with electoral malpractices. The 1st Respondent conducted its party primaries for the position of the Member of County Assembly, Kayole South Ward, Nairobi County on 30th April 2017.
2. The 1st Claimant complained to the 1st Respondent's Special County Appeals Tribunal but the appeal was dismissed and the 1st Respondent proceeded and issued the final nomination certificate to the 2nd Respondent. As a consequence, the Claimants approached this Tribunal seeking for the following prayers:
 - a) A declaration that the final nomination certificate issued by the 1st Respondent to the 2nd Respondent as the nominee for the Member of County Assembly, Kayole South Ward, Nairobi County was irregular.

- b) An order cancelling the final nomination certificate issued by the 1st Respondent to the 2nd Respondent as the nominee for the Member of County Assembly, Kayole South Ward, Nairobi County.
 - c) An order restraining the 1st Respondent from presenting the name of the 2nd Respondent to the IEBC as the nominee for the position of the Member of County Assembly, Kayole South Ward, Nairobi County.
3. When the matter came up for mention on 11th May 2017, the Claimants were ordered to serve the 1st and 2nd Respondent. However, the Claimants failed to serve as ordered leaving this Tribunal without option but to proceed and make its determination.

Issues for Determination

4. The primary issue for determination is what would be the impact of failing to serve the Respondent as ordered.

Analysis

5. *Section 20* of the *Civil Procedure Act* makes it mandatory for the defendant to be served where a suit has been duly instituted against such a person. *Order 5 rule 15* in this regard requires the person serving the summons or effecting the service of court orders to swear an affidavit of service to confirm that service was indeed carried out.
6. *Order 15 rule 15 (1)* provides, *"The serving officer in all cases in which summons has been served under any of the foregoing rules of this Order shall swear and annex or cause to be annexed to the original summons an affidavit of service stating the time when and the manner in which summons was served and the name and address of the person (if any) identifying the person served and witnessing the delivery or tender of summons. The affidavit of service shall be in Form No 4 of Appendix A with such variations as circumstances may require."*

7. Upon careful perusal of the records before us, we noted that the Claimants failed to serve the Respondents as was ordered and no justifiable excuse or reason has been given to us. For that reason, we find no basis for entertaining the Claimants' complaint.

Orders

8. In the premises, this Tribunal orders that:

- a) That the Claimant's case be and is hereby dismissed.*
- b) No orders as to cost since the Respondent was neither served nor entered appearance. Orders accordingly.*

DATED AT NAIROBI THIS 2ND DAY OF JUNE 2017

Kyalo Mbobu..... (Chairman)

Hassan Abdi..... (Member)

Dr. Adelaide Mbithi(Member)