



REPUBLIC OF KENYA
POLITICAL PARTIES DISPUTES TRIBUNAL
COMPLAINT NO. 104 OF 2017

HON. EDICK PETER OMONDI ANYANGA.....CLAIMANT
VERSUS
ORANGE DEMOCRATIC MOVEMENT PARTY.....RESPONDENT

JUDGMENT

Summary of the Case

1. The Claimant had appealed before the Respondent's National Appeals Tribunal against the actions of the Respondent's Returning Officer who irregularly issued a provisional nomination certificate to one Fredrick Ogenga who was trailing the Claimant by a big margin. Cognisant of the flaws that dogged the nomination of Nyatike National Assembly, the Respondent's National Appeals Tribunal withdrew the provisional nomination certificate issued to the said Fredrick Ogenga and ordered a fresh nomination exercise.
2. However, the Respondent failed to conduct fresh primaries as ordered by its own National Appeals Tribunal. Thus, apprehensive that Fredrick Ogenga having been irregularly issued with a provisional nomination certificate, despite trailing the Claimant by a big margin, the Claimant has now moved to this Tribunal for three main reliefs.
 - a) The certification of this case as urgent.

- b) That the Respondent be restrained from issuing nomination certificate for the position of Member of National Assembly, Nyatike Constituency pending the hearing and determination of this matter.
 - c) That the Respondent be restrained from submitting the name of any person, other than the Claimant, to the IEBC as the duly nominated candidate for the position of Member of National Assembly, Nyatike Constituency pending the hearing and determination of this matter.
3. When the Notice of Motion, seeking for the above prayers, was placed before this Tribunal on the 6th May 2017, the Tribunal granted prayer (a) and ordered the service of the same upon the Respondent and the Interested Party, Mr. Fredrick Ogenga by substituted means. Come the 8th May 2017, both parties, by consent, were ordered to exchange their skeleton by 10am on 9th May 2017. However, it was only the Claimant who complied and filed his submissions; the Respondent and the Interested Party did not. This left the Tribunal without an option except to proceed and determine this matter in consideration of the strict timelines for nominations on 10th May 2017.

Issues for Determination

4. The main issue for determination in this case is, what appropriate reliefs should be given to the Claimant by this Tribunal in light of the failure of the Respondent to comply with the orders of its own National Appeals Tribunal?

Analysis

5. Available on the Tribunal's records are the Claimant's bundle of documents, namely a Notice of Motion filed under a certificate of urgency and supported by the affidavit of Hon. Edick Peter Omondi Anyanga, the Claimant's appeal the Respondent's National Appeals Tribunal, the decision of Respondent's National Appeals Tribunal, complaint and the Claimant's submissions. Also available on

record is the Tribunal's order dated 7th May 2017. However, neither the Respondent nor the Interested Party have replied or responded to the complaint.

6. From our analysis of these documents and in particular the Respondent's own ruling, this Tribunal has found that the Respondent disobeyed the orders of its National Appeals Tribunal when it failed to hold afresh the nomination exercise for Nyatike Member of National Assembly because they were flawed. The Respondent's Tribunal also withdrew the provisional nomination certificate given to Fredrick Ogenga. However, the Respondent did not do as ordered.
7. That being so, this Tribunal hold the view that the actions of the Respondent are unjustified in the circumstances and flies on the face of clear constitutional provisions on the individual's right to political choice.
8. Article 38 of the Constitution of Kenya, 2010, guarantees the right of every citizen to make political choices, which includes the rights to form and participate in the activities of a political party. In this regard, one has the right to take part in a free, fair and regular elections based on universal suffrage and the free expression of will to vie for any office of any political party to which such a person is a member.
9. To this end, Article 91 (1) (d) of the Constitution specifically obligates political parties in Kenya to abide by the democratic principles of good governance, promote and practice democracy through regular, fair and free elections within the party. These, to our interpretation, meant that the Respondent ought to have made a proper determination of the issue at hand and accorded justice to nomination candidates contesting for the position of Member of National Assembly, Nyatike Constituency.
10. For this reason, this Tribunal has noted from the unchallenged evidence of the Claimant that the Claimant had garnered 6,970 votes against 3,120 votes for the

Interested Party and 1,970 votes for one Mr Tom Odege by the time the Returning Officer stopped tallying the votes. In this regard, it is apparent that the Claimant got most votes and as such, ought to be recognised as the winner for the position of Member of National Assembly, Nyatike Constituency. In any case, the Claimant has demonstrated vide his supplementary affidavit that the Interested Party herein has since been issued with a clearance letter by the Registrar of Political Parties to vie as an independent candidate for the said Nyatike Constituency.

Orders

11. In light of the reasons advanced above, this Tribunal orders as follows:

- a) That the Claimant's case is hereby allowed.
 - b) That nomination certificate issued to Fredrick Ogenga is hereby nullified.
 - c) That in light of the incomplete tallying of the votes, the justice of the case demands that the ODM NEB proceeds to nominate the Claimant for the position of the Member of National Assembly for Nyatike Constituency, Migori County.
 - d) No orders as to cost in order to foster party unity, growth and democracy.
- Orders accordingly.

DATED AT NAIROBI THIS 9TH DAY OF MAY 2017

Kyalo Mbobu (Chairman)

James Atema (Member).....

Hassan Abdi (Member).....

