



REPUBLIC OF KENYA  
IN THE POLITICAL PARTIES TRIBUNAL AT NAIROBI  
COMPLAINT NO 175 OF 2017

ELIJAH NYANDIEKA OSIEMO.....COMPLAINANT  
VERSUS  
DANIEL RABAN MASIRA.....1<sup>ST</sup> RESPONDENT  
ORANGE DEMOCRATIC MOVEMENT.....2<sup>ND</sup> RESPONDENT

JUDGMENT

**Introduction**

1. The complainant contested the Nyamaiya Ward, Nyamira County Assembly ODM primaries, held on 25<sup>th</sup> April, 2017 by the 2<sup>nd</sup> Respondent. He alleges that the nominations were marred with irregularities. The alleged irregularities mainly revolved around voter disenfranchisement and suppression.
2. Precisely, his complaint concerns the use and nature of the voter register. This is because the 2<sup>nd</sup> Respondent insisted on using the printed register thus disenfranchising the claimant's family members and other supporters. It is also alleged that the register was printed in small and difficult to print font thus causing great delays in finding voter's names on the roll.
3. His appeal was first upheld by the County Appeal Tribunal which was later reversed by the National Appeals Tribunal *inter alia* because the 1<sup>st</sup> Respondent was never notified of the proceedings therein. He therefore comes to us under section 40 of the Political Parties Act 2011.
4. The Respondents on their part assert that the irregularities, if any, affected all the candidates equally.

5. This Tribunal will overturn an election either where there are substantial irregularities or where there are minor irregularities which affect the outcome of the election. See *Moses Masika Wetang'ula v Musikari Nazi Kombo [2014] eKLR at 33*. No election can be perfect, minor infractions arising from inadvertent human error and do not have any impact on the outcome of the election are excused. We hold that the allegations of irregularities in this matter were minor infractions.
6. On the second limb of the complaint, we hold that the Complainant was not given a fair hearing before the National Appeals Tribunal. We quash the decisions of the County Appeals Board and the National Appeals Tribunal in so far as both did not accord with the rules of natural justice.

**Reliefs**

7. Having found that the outcome of the election was not affected by the minor infractions, this Complaint is dismissed. Let each party bear its costs in the interest of party unity.
8. Orders accordingly

**DATED and DELIVERED at Nairobi this 11<sup>th</sup> May 2017.**

**Kyalo Mbobu .....**

**Chairperson**

**James Atema .....**

**Member**

**Hassan Abdi .....**

**Member**