



REPUBLIC OF KENYA
THE POLITICAL PARTIES DISPUTES TRIBUNAL
COMPLAINT NO. 174 OF 2017

ELIUS OKUMU OTIENO.....CLAIMANT

-VERSUS-

ORANGE DEMOCRATIC PARTY.....1ST RESPONDENT

SPECIAL COUNTY APPEALS TRIBUNAL.....2ND RESPONDENT

PERPETUA MPONJIWA.....3RD RESPONDENT

MARY VICTORIA.....4TH RESPONDENT

MOSES MUDHUNE.....5TH RESPONDENT

JUDGMENT

Summary of the Complaint

1. By a claim dated 9th May 2017, the Complainant seeks to challenge the nomination certificate issued by the 1st Respondent to the 3rd Respondent. The Claimant, the 3rd and 4th Respondents were aspirants for the position of Member of County Assembly Kileleshwa Ward and participated in the nomination exercise on 30th April 2017. The Claimant was declared the winner and issued with a provisional certificate.
2. The 3rd & 4th Respondents appealed to the Special County Appeals Tribunal (**IDRM**) citing incidences of malpractice and irregularities. The Claimant on the other hand insisted that the voting process was smooth. The **IDRM** judgement issued on 6th May 2017 found that the appeal succeeded and ordered withdrawal of the Claimant’s Provisional certificate. The National Elections Board was also ordered to issue a certificate to the 3rd Respondent. The Claimant now challenges

the decision of the **IDRM** on among other grounds, that there was no justification of the **IDRM** process directing issuance of a certificate to a person who had not emerged the clear winner in the nomination process.

3. The Claimant further faults the process within the Special County Appeals Tribunal for being in contravention of the Constitution of Kenya, the Fair Administrative Actions Act, the **ODM** Constitution & Election & Nomination Rules by not allowing him opportunity to be heard.

The Response

4. The 3rd Respondent has filed a Replying Affidavit dated 10th May 2017. She reiterates the claim of irregularities during the nomination exercise including the impartiality of the polling officials. There is an Affidavit by Moses Mudhuna who states that he is a Presiding Officer and when he reported to the station of work on the polling day he was surprised to learn that he had been replaced. This allegation of irregularities is repeated by Alex Abiero who was also a polling clerk in his affidavit.

Issue

5. We heard from counsel for the Claimant and from the 2nd and 3rd Respondents. In our view the main issue for determination is whether the Claimant was validly nominated as the candidate for Member of the County Assembly for Kileleshwa Ward. The Claimant also raised a further issue as to whether the judgement and consequential orders of the special County Appeals Tribunal dated 6th May 2017 should be set aside.

Analysis

6. The record and in particular the **IDRM** judgement indicates that there were incidences of malpractice as pointed out by the appellant. However, the **IDRM** found that the nomination exercise though tempered with some irregularities was able to determine a winner. We also took note that the parties were represented at the **IDRM** process. We have considered the Claimant's skeleton submissions and those of the 3rd Respondent. The 1st Respondent did not take a position and indicated that it will be bound by our outcome. The **IDRM** process having been undertaken as permitted by the 1st Respondents Constitution we do

not see any need to interfere with the conclusion and decision of the IDRMM judgement.

Orders/Reliefs

7. In the circumstances, we find and order that:-
- a) **The purported cancellation of the nomination certificate issue to the Complainant pursuant to the nomination for candidate for Member of County Assembly for Kileleshwa Ward conducted on 30th April 2017 by the 1st Respondent's special County Appeals Board is null & void.**
 - b) **The issuance of the nomination certificate to the Complainant pursuant to the nomination exercise for the position of MCA Kileleshwa Ward is proper.**
 - c) **The claim dated 9th May 2017 is upheld and the 1st Respondent is hereby ordered to forthwith issue a certificate to the Complainant for nominations as candidate for Member of the County Assembly for Kileleshwa Ward is upheld.**
 - d) **That notification be sent to the Independent Elections and Boundaries Commission.**
 - e) **No order as to costs.**

DATED and DELIVERED AT NAIROBI this 11TH DAY of MAY 2017

- 1. **M. O. Lwanga (Presiding Member)**
- 2. **Paul Ngotho (Member).....**
- 3. **Dr. Adelaide Mbithi (Member)**

4. Desma Nungo (Member)