



REPUBLIC OF KENYA
IN THE POLITICAL PARTIES DISPUTES TRIBUNAL AT NAIROBI
COMPLAINT NO. 79 OF 2017

VERSUS

FLORENCE ACHIENG OKOWA.....CLAIMANT/APPLICANT

AND

ORANGE DEMOCRATIC MOVEMENT.....1ST RESPONDENT

JULIUS OCHIENG GENGA.....2ND RESPONDENT

JUDGMENT

A. Complaint.

[1] The Complainant, in her Complaint dated 8th May 2017, asserts that she participated in the nomination exercise of the 1st Respondent for the seat of Member of County Assembly of Koru/Muhoroni. She alleges that the nomination exercise was marred by violence and irregularities in contravention of the Constitution of Kenya 2010, the Election Act and the 1st Respondent’s Party elections rules, regulations and code of conduct. Some reliefs sought in the complaint are unclear as they are sought against the ‘respondent’ but there are two respondents. The clear reliefs sought are: to quash the nomination of the 2nd respondent, to nullify the nominations and results of Member of County Assembly of Koru/Muhoroni, costs and any other order the Tribunal deems fit.

B. Preliminary objection

[2] The 2nd respondent filed a Preliminary Objection to the claim which he canvassed on 8th May 2017 in the presence of the claimant and her Counsel. He urged that it violated the provisions of section 40(2) of the Political Parties Act which mandates Party Internal Dispute Resolution Mechanism (IDRM) before parties can approach the Tribunal. He urged that the application was incompetent, fatally defective and a nullity

in law and constituted an abuse of the court process thus warranting its dismissal with costs.

C. Issues for determination

[3] The sole issue that emerges for determination is *whether this tribunal has jurisdiction to entertain this claim.*

D. Analysis and determination

[4] To entertain this complaint, we need to satisfy ourselves that the complainant filed an appeal or complaint to the 1st Respondent's IDRМ against the nomination exercise for the seat of Member of County Assembly of Koru/Muhoroni.

[5] The complainant was initially acting in person but was represented by Counsel during the hearing. Whilst acting in person, she asserted that she petitioned the the 1st respondent IDRМ sitting at Grand-Swift hotel on Riat Kisumu road. She submitted that her pleas were not granted since she was unable to part with the Ksh, 30000 that she was asked for. She insinuated to us that this was a bribe of sorts and as she was unable to comply, her appeal was declined. We pause to point here that there is no evidence to prove this assertion. The assertion is also against trite law that 'he who alleges must prove' as expressed in section 107 of the Evidence Act.

[6] From the records and pleadings which were rather inconsistent, we note that there was no attempt of IDRМ with the 1st respondent as raised by the 2nd Respondent's Preliminary Objection. In light of this and guided by section 40 (2) of the Political Political Act, our hands are tied and we can do no more that down our tools.

E. Orders

[7] The upshot is that the complaint dated 8th May, 2017 is dismissed with no order as to costs.

DATED AT NAIROBI THIS 9th DAY OF May 2017.

1. Milly Lwanga OdongoPresiding Member

2. Paul NgothoMember
3. Dr. Adelaide MbithiMember
4. Desma Nungo.....Member