



REPUBLIC OF KENYA  
POLITICAL PARTIES DISPUTES TRIBUNAL  
COMPLAINT NO. 247 OF 2017

FREDRICK OKOLLA OJWANG.....COMPLAINANT

-VERSUS-

ORANGE DEMOCRATIC MOVEMENT.....1<sup>ST</sup> RESPONDENT

FADHILI MWALIMU MAKARANI.....2<sup>ND</sup> RESPONDENT

**JUDGMENT**

**Summary of the Complaint**

1. This Complaint filed on 12<sup>th</sup> May 2017 by way of Statement of Claim arises out of a nomination exercise held by the 1<sup>st</sup> Respondent on 29<sup>th</sup> April 2017 in respect of the position of MCA, Portreitz Ward - Changamwe Constituency. The Complaint avers that the exercise was conducted peacefully and in accordance with the 1<sup>st</sup> Respondent's Rules upon which he was declared the winner by the County Returning Officer, having garnered 430 votes against the 2<sup>nd</sup> Respondent's 423 votes. The Complainant was issued with the Provisional Certificate. Not being aware of any disputes lodged within the party internal dispute resolution mechanism, the Complainant seeks to be issued with the Nomination Certificate. The 1<sup>st</sup> Respondent has instead issued the Nomination Certificate to the 2<sup>nd</sup> Respondent who finished second behind the Complainant.
2. The Complainant has sworn a supporting affidavit adducing evidence in aid of his case. The County Returning Officer, Maurice Adongo Anyango has also sworn an affidavit reiterating the Complainant's case.

**The Response**

3. The 1<sup>st</sup> Respondent did not enter appearance or file a response despite service. The 2<sup>nd</sup> Respondent filed a replying affidavit on 16<sup>th</sup> May 2017. He also avers that he was declared the winner by the Constituency Returning Officer, and issued with the provisional certificate. According to his tally, he garnered 422 votes against the Complainant's 419. He avers that he has since been issued with the Nomination Certificate and asks us to dismiss the complaint on the ground that there was no exhaustion of internal dispute resolution mechanism.
4. The 2<sup>nd</sup> Respondent also faults the Complainant's documents relying on Rule 18.6 of the 1<sup>st</sup> Respondent's Nomination and Election Rules which provides that the results for the constituency and wards shall be announced by the Constituency Returning Officer. The 2<sup>nd</sup> Respondent asserts that he is the lawful nominee of the 1<sup>st</sup> Respondent in respect of the position of Member of County Assembly, Porttreitz, Changamwe Constituency, Mombasa County.

**Issue for determination**

5. In our consideration, the main issue for determination is who is the lawful nominee of the 1<sup>st</sup> Respondent between the Complainant and the 2<sup>nd</sup> Respondent.

**Analysis**

6. Before analyzing the issue before us for consideration, we note that the complainant raised an issue as to the Tribunal's jurisdiction. It is not in dispute that the Tribunal has jurisdiction over disputes arising out of the party primaries or disputes between party members and their political parties. The approach taken by the Tribunal in determining whether to exercise jurisdiction on grounds of failure to explore internal dispute resolution mechanism is that the party has to demonstrate that they made attempt to raise the issue for resolution within the

party structures. In this instance, it is clear through correspondence that the Complainant made sufficient effort. We find that the Tribunal has jurisdiction over the matter.

7. From the evidence adduced, both the Complainant and the 2<sup>nd</sup> Respondent assert their wins and entitlement to the Nomination Certificate. Each of them was issued with a provisional certificate.
8. Without much consideration of the documents, it is clear that under the 1<sup>st</sup> Respondent's Nomination and Election Rules, the mandate to declare results in respect of the position of Member of County Assembly rests with the Constituency Returning Officer under rule 18.6. The Complainant was issued with the provisional certificate by Maurice Adongo Anyango who is the County Returning Officer while the 2<sup>nd</sup> Respondent was issued the provisional certificate by the Constituency Returning Officer, one Mohamed Abdalla. The latter also attached his tallied results. As the Tribunal we have no reason to depart from the party constitution by endorsing the results or provisional certificate issued by a person other than that mandated under the 1<sup>st</sup> Respondent's own rules. There is no dispute as to how the nomination exercise was conducted.

**Reliefs**

9. In the circumstances, we are not satisfied that the complaint has merit. The Statement of Claim dated 12<sup>th</sup> May 2017 is dismissed with no order as to costs.

**Dated at NAIROBI this 16TH DAY of MAY 2017**

**1. Kyalo Mbobu .....(Chairman)**

**2. James Atema .....(Member)**

3. Hassan Abdi .....(Member)