



**REPUBLIC OF KENYA**  
**POLITICAL PARTIES DISPUTES TRIBUNAL**  
**COMPLAINT NO. 153 OF 2017**

**FREDRICK ONYANGO OKEYO .....COMPLAINANT**

**VERSUS**

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

**ELIZABETH AKINYI MANYALA.....2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

**Summary of the Case**

1. The Claimant and the 2<sup>nd</sup> Respondent were both contestants in the 1<sup>st</sup> Respondent's party primaries held on 25<sup>th</sup> April 2017 for the position of the Member of County Assembly, Kayole South Ward, Nairobi County. The Claimant garnered 601 while the 2<sup>nd</sup> Respondent got 700 votes. This was according to the tally sheet of the Embakasi Central Constituency Returning Officer, one Dick Opata. Both the Claimant and the 2<sup>nd</sup> Respondent were issued with the provisional nomination certificates although the final nomination certificate was ultimately issued to the 2<sup>nd</sup> Respondent.
2. The Claimant's provisional nomination certificate was challenged at the 1<sup>st</sup> Respondent's Special County Appeals Tribunal by one Duncan Oluoch Ochieng' but the appeal was dismissed and the Claimant's nomination upheld. However, aggrieved by the 1<sup>st</sup> Respondent's decision of issuing the final nomination

certificate to the 2<sup>nd</sup> Respondent, the Claimant lodged his complaint with this Tribunal seeking for the following prayers:

- a) An order cancelling the final nomination certificate issued to the 2<sup>nd</sup> Respondent.
  - b) An order declaring the Claimant as the valid 1<sup>st</sup> Respondent's nominee for the position of the Member of County Assembly, Kayole South Ward, Nairobi County.
  - c) An order directing the 1<sup>st</sup> Respondent to issue the Claimant with the final nomination certificate as the 1<sup>st</sup> Respondent's nominee for the position of the Member of County Assembly, Kayole South Ward, Nairobi County.
3. In reply, the 2<sup>nd</sup> Respondent stated that the nomination process was marred with violence, hooliganism and other forms of irregularities such as double voting, bribery and stuffing of ballot papers, which the 2<sup>nd</sup> Respondent blamed on the Claimant. The 2<sup>nd</sup> Respondent therefore implored this Tribunal to dismiss the Claimant's complaint forthwith.

#### **Issues for Determination**

4. The primary issue for determination is whether the 1<sup>st</sup> Respondent's nominations for the position of the Member of County Assembly, Embakasi Central Constituency, Kayole South Ward, Nairobi County held on 30<sup>th</sup> April 2017 was free, fair and credible.

#### **Analysis**

5. The requirement for a free and fair elections is one of the general principles undergirding Kenya's electoral processes. For an election exercise to be said to have been free and fair, according to *Article 81* of the *Constitution of Kenya, 2010*, the following conditions must be met. They include allowing voting through secret balloting, freedom from violence, intimidation and improper influence or corruption, elections being conducted transparently by an

independent body and administered in an impartial, neutral, efficient, accurate and accountable manner.

6. These requirements also underlie the citizens' rights and freedoms contained in *Article 38* of the *Constitution of Kenya, 2010*, and as such, are binding on political parties' nomination processes. *Article 38* 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.
7. 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. To fulfil these constitutional requirements, *section 9* of the *Political Parties Act, 2011* read together with the *Second Schedule* of the same sets out the key issues that must be contained in the constitutions of all duly registered political parties in Kenya.
8. The relevant issue for our purposes in the matter is the rule that a political party constitution must establish guidelines for, among other things, the nomination of candidates for elections.
9. The 1<sup>st</sup> Respondent's nomination rules also guarantee the rights and freedoms of their members to a free, fair and credible elections. As a political party that is duly registered in Kenya, the 1<sup>st</sup> Respondent owed to its members the obligation to conduct a free, fair and credible nomination process. This meant, among other things, that the exercise ought to have been free from violence, intimidation of voters or influence by corruption and accurate recording of the results of votes balloted by the Returning Officer.

10. The Constituency Returning Officer has sworn affidavit citing several incidences of electoral malpractices including double voting, ferrying of ballot boxes and papers in a vehicle driven by a relative to the Claimant, intimidation of other aspirant's agents by the Claimant and the firing of bullets at the Mwangaza polling station, which scared away voters and resulted into some of them being injured. The Constituency Returning Officer also remarked at the bottom of the tally sheet that there were arguments among agents to abscond the signing of the tally sheets because they disputed the results.
11. The other problems, according to the affidavit of one Akala Bethwel, included lack of lighting at the Dhawabu polling station and the locking out of some agents by purported security men. We find these revelations quite disturbing for the reason that Constituency Returning Officer, despite noting that the entire process was marred with double voting went ahead to tally the outcome and declared both the Claimant and 2<sup>nd</sup> Respondent the winner and even issued them with the provisional nomination certificates.
12. The same was also lost to the 1<sup>st</sup> Respondent Special County Appeals Tribunal when it concluded that the process was free and fair and went ahead to dismiss the appellant's case despite the contrary being the case. The 1<sup>st</sup> Respondent also erroneously issued the 2<sup>nd</sup> Respondent with the final nomination certificate in spite of the nomination exercise being substantially flawed making it difficult to determine the credible winner for the position of the Member of County Assembly, Embakasi Central Constituency, Kayole South Ward, Nairobi County.
13. For the reasons advanced above, this Tribunal is not persuaded by the Claimant's arguments that the 1<sup>st</sup> Respondent's party primaries for the Kayole South Ward were free, fair and credible by the standards set out by the *Constitution of Kenya, 2010*. The Claimant's case therefore fails.

## **Orders**

14. In the premises, this Tribunal orders as follows:

- a) *That the Claimant's case be and is hereby dismissed.*
- b) *That the 1<sup>st</sup> Respondent be and is hereby restrained from issuing the final nomination certificate to any other person for the position of the Member of County Assembly, Kayole South Ward, Embakasi Central Constituency, Nairobi County.*
- c) *That, in the event that the 1<sup>st</sup> Respondent has issued the final nomination certificate to the 2<sup>nd</sup> Respondent or any another individual for the position of the Member of County Assembly, Kayole South Ward, Embakasi Central Constituency, Nairobi County, the same is hereby declared null and void.*
- d) *That the 1<sup>st</sup> Respondent be and is hereby ordered to conduct fresh nominations for the position of the Member of County Assembly, Kayole South Ward, Embakasi Constituency, Nairobi County within 24 hours of this judgment forthwith.*
- e) *No orders as to cost in order to foster party unity, growth and democracy. Orders accordingly.*

**DATED AT NAIROBI THIS 16TH DAY OF MAY 2017**

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

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

**Hassan Abdi (Member).....**