



REPUBLIC OF KENYA  
IN THE POLITICAL PARTIES DISPUTES TRIBUNAL AT NAIROBI  
COMPLAINT NO. 307 OF 2017

FRIDAH MUENDI.....CLAIMANT

VERSUS

MOFFAT MAITHA MUIA.....1<sup>ST</sup> RESPONDENT

JUBILEE PARTY.....2<sup>ND</sup> RESPONDENT

RULING

*Introduction and Claimant's Case*

1. The Claimant herein vied for the position of Member of County Assembly, Matungu West Ward in Matungulu Constituency within Machakos County. She claims that she won, but the victory was stolen by the 1<sup>st</sup> Respondent. She appealed to the Jubilee Party Appeals Tribunal against the decision of the Returning Officer naming the 1<sup>st</sup> Respondent as winner.
2. Her appeal was *inter alia* based on the grounds that the 1<sup>st</sup> Respondent was not a registered member of the 2<sup>nd</sup> Respondent, but was a registered member of the National Rainbow Coalition (NARC). As a result, he did not qualify to contest and should not have contested the 2<sup>nd</sup> Respondent's party primaries. His participation violated the 2<sup>nd</sup> Respondent's Rule 2(2)(9).
3. The Claimant filed the results of a search conducted at the Officer of the Registrar of Political Parties as evidence of her contentions.
4. Indeed, the Jubilee Party Appeals Tribunal found that the 1<sup>st</sup> Respondent was not a registered member of the 2<sup>nd</sup> Respondent; and did not have a party

membership number. Instead he was a registered member, number 188065, of NARC.

5. Further, the Tribunal in its ruling of 11<sup>th</sup> May, 2017 found that the irregularities complained of amounted to substantial non-compliance of electoral laws. As a result, it nullified the 1<sup>st</sup> Respondent's nomination and issued the complainant with a nomination certificate dated 9<sup>th</sup> May, 2017.

*2<sup>nd</sup> Respondent*

6. The 2<sup>nd</sup> Respondent filed an affidavit sworn by Stephen Ombasa, counsel. It was submitted that the application was based on a misrepresentation of facts by the complainant. It was further averred that the complainant had lost the nominations by a margin of 889 votes having garnered 241 votes against the 2<sup>nd</sup> Respondent's 1,130. It was further submitted that the 2<sup>nd</sup> Respondent had indeed confirmed that the 1<sup>st</sup> Respondent was its member. We were urged to dismiss the application on the basis that it was meant to abuse the Tribunal's process, was frivolous and designed to vex and unnecessarily embarrass the 2<sup>nd</sup> Respondent.
7. We note however that no evidence of party membership was attached.

*Analysis*

8. A party primary is the manner in which a political party selects or elects its candidate for an election. A party cannot pick a member of another party as its candidate. A political party is a member's club and only members could have and exercise rights conferred on them by the party. Accordingly, we are persuaded by the evidence on record that the 1<sup>st</sup> Respondent is a member of the National Rainbow Coalition member number 188065. In The 2<sup>nd</sup> Respondent's nomination of the 1<sup>st</sup> Respondent is irregular and is hereby set aside
9. In any case we do not buy the 2<sup>nd</sup> Respondent's contention that its judgment of 11<sup>th</sup> May, 2017 was at some point unilaterally reviewed. There is no evidence that such review ever took place or if it did, that the complainant was ever made a

party to it. Such review amounted to violation of the Complainant's legitimate expectation that her name would be gazetted. Concerning unilateral and arbitrary decisions by political parties, we held as follows in *Complaint No. 251 of 2017 Elijah Omondi v Orange Democratic Movement & another* at para 9 and 10:

We note that Article 91 of the Constitution, which establishes political parties as agencies of the democratic process, requires political parties to abide by the principles of good governance and democracy. They must also promote the principles and objects of the Constitution including the national values and principles of governance. We agree with the Claimant and hold that the current Constitution engenders a culture of justification in which every decision by a political party must be justified. The culture of justification demands that a political party must supply an affected person with the reasons for the party's decision. It is only by supplying reasons that it can be ascertained whether or not the decision is reasonable and justifiable in an open and democratic society.

10. We have found no evidence that the Claimant was ever informed of any of the reasons the Respondents have put forward as justification for failure to conduct party primaries. In *Complaint 170 of 2017 Harrison Mburu Gatumbi v Jubilee Party & 20 others* we held as follows:

The right to reasons is a constitutional right guaranteed in Article 47(2) and explicated by section 4(3) of the Fair Administrative Action Act, 2015. The Act requires that information on the nature of the administrative action

together with prior and adequate reasons must be given to the person whose rights are affected. Reasons for decisions by political parties are not only a part of the principles of natural justice and fairness, but also enable an affected party member to know the possibility of and grounds for potential appeal to this Tribunal. Reasons also enable this Tribunal to have a better appreciation of the decision thus conduct a better appeal or review.

*Reliefs*

11. In *Complaint No 48 John Mruttu v Thomas Ludindi Mwachugu & 2 others* we held that in every matter over which we have jurisdiction, this Tribunal can grant any order that is just and equitable in accordance with section 11(1) of the Fair Administrative Action Act, 2015. The proper discharge of this Tribunal's mandate requires it to grant effective remedies, which means the most appropriate remedy in the circumstances of the case. We have found that the initial nominations were not free or fair and that the complainant's appeal was terminated in a manner that violated the right to be heard.
12. Accordingly, the justice of this case requires us to make the following orders:
  - a. **The Independent Electoral and Boundaries Commission be and is hereby restrained from including the name of the 1<sup>st</sup> Respondent, Moffat Maitha Muia, as Jubilee Party's nominee for Member of County Assembly for Matungulu West Ward, Matungulu Constituency in the Kenya Gazette**
  - b. **The actions and decision of the 2<sup>nd</sup> Respondent, Jubilee Party of presenting the name of the 1<sup>st</sup> Respondent, Moffat Maitha Muia, as Jubilee Party's nominee for Member of County Assembly Matungulu West Ward, Matungulu Constituency contrary to the ruling in Jubilee**

National Elections Appeal Tribunal in Appeal No. 255 & 364 of 2017 be and is hereby declared null and void

- c. The 2<sup>nd</sup> Respondent, Jubilee Party be and is hereby compelled to forward the name of the complainant, Fridah Muendi, as Jubilee party's nominee for Member of County Assembly Matungulu West Ward, Matungulu Constituency to the Independent Electoral and Boundaries Commission.
- d. Independent Electoral and Boundaries Commission be and is hereby compelled to gazette Fridah Muendi as Jubilee party's nominee for Member of County Assembly Matungulu West Ward, Matungulu Constituency. For the avoidance of doubt, in the event that the Independent Electoral and Boundaries Commission has gazetted Moffat Maitha Muia, it is hereby ordered to degazette his name forthwith.
- e. Each party to bear its own costs.
- f. Notice to issue to the Independent Electoral and Boundaries Commission.

**DATED and DELIVERED at Nairobi this 2nd day of June 2017**

**Kyalo Mbobu ..... (Chairperson)**

**Paul Ngotho ..... (Member)**

**Desma Nungo ..... (Member)**