



REPUBLIC OF KENYA
POLITICAL PARTIES DISPUTES TRIBUNAL
COMPLAINT NO. 85 OF 2017

GABRIEL UMIDHA OLENJE1ST COMPLAINANT
DANIEL OJJI AWUONDA.....2ND COMPLAINANT
LYDIAH ADHIAMBO SADIA3RD COMPLAINANT
MARISA ATIENO NYAKINYE4TH COMPLAINANT
MUNYIKO MAURICE KIHINGU.....5TH COMPLAINANT

-VERSUS-

ORANGE DEMOCRATIC MOVEMENT.....1ST RESPONDENT
HON. ZACHARY OKOTH OBADO.....2ND RESPONDENT

JUDGMENT

Summary of the case

1. The Complainants through their Memorandum of Complaint filed on 5th May 2017 seeks to challenge the 2nd Respondent’s participation in the nomination process for the gubernatorial position for Migori County conducted by the 1st Respondent on or about 24th April 2017. Their challenge is grounded on the averment that the 2nd Respondent was not a member of the 1st Respondent as at 16th March 2017 and therefore ought not to have participated or to be considered

- in the 1st Respondents nomination exercise. They argue that the 2nd Respondent was a member of People's Democratic Party (PDP).
2. The Complainants contends that the 1st Respondent had invited applications from aspirants through an advertisement in the Daily Newspaper dated 3rd November 2016 specifying a deadline for submission of applications as being 30th November 2016. The Complainants thus takes the position that the 2nd Respondent having joined the 1st Respondent well after the deadline specified above, was ineligible to participate in the nomination exercise. They also raise several allegations of irregularities in the nomination exercise and the process resulting to the issuance of the provisional certificate to the 2nd Respondent.
 3. The Complainants contends that the 1st Respondent has been treated favourably. This is in regards to decisions and processes undertaken by the 1st Respondent's National Appeals Tribunal. The Complainants thus seek a declaration that the 2nd Respondent was ineligible to be considered for the 1st Respondent's nomination process and pray that the 1st Respondent be restrained from picking the 2nd Respondent as its party nominee for Migori County Gubernatorial seat. They also seek the invalidation of the party nomination certificate already issued to the 2nd Respondent.
 4. In opposition to the Complaint, the 1st Respondent filed an affidavit sworn by its Executive Director, Oduor Ong'wen on 7th May 2017 and filed on 8th May 2017. The 2nd Respondent on his part filed a replying affidavit together with a notice of preliminary objection all dated on 8th May 2017.
 5. In view of the limited timelines at the Tribunal's disposal, the claim and the preliminary objection were argued concurrently with the direction that the preliminary objection would be first considered and if dismissed, then the

Tribunal would determine the Complaint on its merit. The 1st Respondent supported the preliminary objection.

Preliminary Objection

6. The 2nd Respondent's Preliminary Objection raises two points of law, that:
 - a) *The Tribunal lacks jurisdiction to hear and determine the complaint and the application filed on grounds that the Complainants have not exhausted internal party's dispute resolution mechanism as provided in section 40(2) of the Political Parties Act;*
 - b) *The Tribunal does not have powers under the Political Parties Act to grant orders sought as such orders would have the adverse effect of violating the 2nd Respondent's constitutional rights under Article 38 of the Constitution.*

Determination

7. On the first issue, the Tribunal agrees that internal party processes are essential before the dispute can be considered by the Tribunal under section 40(2) of the Political Parties Act. This Tribunal takes cognizant of the centrality of jurisdiction for a body exercising judicial and/or quasi-judicial authority. As we have stated in *Complaint No.47 of 2017, Hezron Asudi & Another v Prof. Anyang Nyong'o and Others*, the requirement for invocation of parties' IDRM has its rationale in the promotion of political parties' internal democracy and autonomy.
8. The Tribunal has severally rendered itself on this issue and held that where a complainant approaches this Tribunal before exhaustion of internal party dispute resolution mechanisms, it will decline to assume jurisdiction. The Tribunal has adopted a rather flexible approach in considering IDRM by appreciating that the Complainant may experience difficulties in getting the dispute actually resolved

by the political parties. As such, the Complainant's demonstration of sufficient attempt to invoke IDRМ suffices and the Tribunal would assume jurisdiction over the dispute. The Tribunal has also held that a Complainant has to individually invoke IDRМ regardless of whether the political party is seized of the facts in dispute courtesy of other disputants. (*Complaint No.47 of 2017, Hezron J. Opiyo Asudi & Another v Peter Anyang Nyongo & Others*).

9. The 1st Complainant has deponed in his supporting affidavit, particularly paragraphs 16 to 21 circumstances out of which there were grievances. In paragraph 23 thereof, the 1st Complainant clearly appreciates the applicable rules of the 1st Respondent's constitution and in particular Rule 19(2), (3) and (5) which pertains to the 1st Respondent's IDRМ process. None of the disputes cited and evidenced by the 1st Respondent that would otherwise amount to IDRМ, have been shown to have been initiated by any of the Complainants herein.
10. On this point alone, the Tribunal adopts the words of *Nyarangi JA* (as he was) in *Owners of Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] KLR 1*, and finds it appropriate to down its tools for want of jurisdiction without need to consider the other ground of objection. The upshot of our decision is that the preliminary objection has merit and the same is allowed.
11. We are inclined to make the following orders:
 - (1) *The preliminary objection dated 8th May, 2017 is allowed.*
 - (2) *The Complaint dated 5th May, 2017 is dismissed for lack of jurisdiction.*
 - (3) *In the interests of the Party unity, each party shall bear its own costs.*
12. Orders accordingly.

DATED AND DELIVERED AT NAIROBI THIS 8TH DAY OF May 2017.

1. **Kyalo Mbobu (Chairman)**
2. **James Atema (Member)**
3. **Hassan Abdi (Member)**