



REPUBLIC OF KENYA
POLITICAL PARTIES DISPUTES TRIBUNAL
COMPLAINT NO. 51 OF 2017

GOSHI JUMA ALLIYCOMPLAINANT

-VERSUS-

ORANGE DEMOCRATIC PARTY OF KENYA.....1ST RESPONDENT

OMAR MWINYI SHIMBWA..... ..2ND RESPONDENT

JUDGMENT

Summary of the Complaint

[1] This Complaint concerns the Orange Democratic Movement (ODM) party nomination exercise for the position of Member of the National Assembly, Changamwe Constituency held on 22nd April 2017. The Complainant avers that the 2nd Respondent violently disrupted the nomination process and as a result voting was not carried out in five polling stations making it impossible for the results to be announced. He appealed against the nomination exercise before the 1st Respondent’s National Appeals Tribunal (NAT) which appeal was heard on 27th April 2017 and a decision delivered on the same date.

[2] The decision of NAT (hereinafter referred to as IDRM decision) declared that the said nomination exercise was not conducted in a free, fair and transparent manner in accordance with the ODM party Election and Nomination Rules and relevant election laws and directed for a fresh nomination exercise to be conducted. Dissatisfied with the conduct of the repeat nomination exercise, the Complainant now seeks redress from this Tribunal.

Issues for Determination

[3] Following our consideration of the evidence, pleadings and testimony rendered before us, two issues for determination arise:

- a) Whether the 2nd Respondent was responsible for the violence on the day of the nomination exercise and if he should be disqualified from the nomination process
- b) Whether the Complainant was duly notified of the repeat nomination exercise ordered by the IDR decision.

Analysis

(i) Whether the 2nd Respondent was responsible for the violence on the day of the nomination exercise and if he should be disqualified from the nomination process

- [4] That there was violence during the first nomination exercise is undisputed before this Tribunal. The Complainant however alleges that the 2nd Respondent was responsible for the violence and adduced video evidence in support of his claims. The credibility of this evidence was challenged by both the 1st and 2nd Respondent. No other evidence was submitted in the circumstances and therefore the 2nd Respondent's liability could not be established.
- [5] On the allegations of violence against the 2nd Respondent, we are persuaded by the 1st Respondent's submissions that this has not been adequately proven and furthermore that this Tribunal, whose jurisdiction is clearly outlined under section 40 (1) of the Political Parties Act No. 11 of 2011, has no jurisdiction over persons accused of electoral violence.
- [6] This Tribunal has also perused the IDR decision and finds that it adequately addressed the incidences of violence during the nomination process and ordered for a repeat process to be undertaken.

(ii) Whether the Claimant was duly notified of the repeat nomination exercise ordered by the IDR decision

- [7] We note that the 1st Respondent submitted no evidence of advertisement of the repeat nomination exercise. Neither the 1st nor 2nd Respondent adduced any declaration or tally of election results. Rule 14 of the ODM party Election and Nomination Rules states that the National Elections Board shall advertise vacant positions in the prescribed forms. Such forms have not been tendered before this Tribunal. As such we are unable to verify whether the 1st Respondent did or did not advertise and subsequently conduct a repeat nomination exercise.

Reliefs

As a consequence, we make the following orders:

- a) THAT the 1st Respondent carries out a party nomination exercise, in accordance to its constitution and Party rules, that takes care of the interests of all the parties;
- b) In the interest of Party Unity, we order that each party bear its own costs in this matter.

DATED and DELIVERED AT NAIROBI this 8TH DAY of MAY 2017

- 1. M. O. Lwanga (Presiding Member)**
- 2. Desma Nungo (Member)**
- 3. Paul Ngotho (Member).....**
- 4. Dr. Adelaide Mbithi (Member)**