



REPUBLIC OF KENYA
IN THE POLITICAL PARTIES DISPUTES TRIBUNAL AT NAIROBI
COMPLAINT NO. 274 OF 2017

HAZEL NYAMOKI KATANACOMPLAINANT

VERSUS

JUBILEE PARTY NATIONAL ELECTIONS BOARD.....1ST RESPONDENT

JUBILEE PARTY NATIONAL APPEALS TRIBUNAL.....2ND RESPONDENT

JUBILEE PARTY.....3RD RESPONDENT

ABDUL SALAM KASSIM.....4TH RESPONDENT

JUDGMENT

Background

1. The present complaint relates to the 3rd Respondent's nominations for the position of Senator, Mombasa County conducted on 26 April 2017. It was the Claimant's contention that the said exercise was marred with irregularities, the particulars of which are set out in the Statement of Complaint dated 16 May 2017 and her supporting affidavit sworn on even date.
2. Being aggrieved by the manner in which the process was conducted, the Claimant lodged an appeal with the 2nd Respondent on 28 April 2017. However, she contends that the said appeal was not heard and by a decision dated 10 May 2017, she was notified that the appeal had been dismissed. Consequently, the nomination certificate was issued to the 4th Respondent.

3. In response, the 4th Respondent filed Grounds of Opposition dated 19 May 2017 and a Replying Affidavit sworn on even date contending that the application was grossly defective and premised on the wrong provisions of the law. It was the 4th Respondent's position that the Claimant had failed to disclose the results of the said nomination exercise and as such, she was not entitled to the prayers sought on the basis of material non-disclosure. He further contended that the Complainant was not keen on prosecuting the appeal at the National Appeal's Tribunal and therefore the suit was an abuse of the court process. He prayed that the application be dismissed with costs.
4. At the hearing of the matter on 19 May 2017, counsel for the 1st to 3rd Respondent indicated that they would be conceding to the application and that they would not be filing any papers. It was indicated that the 1st to 3rd Respondents would be settling the matter with the Claimant in the following terms:
 - a. That the issuance of a nomination certificate to the 4th Respondent be nullified;
 - b. That the Appeal be referred back to the 3rd Respondent to determine the party's candidate for Senator, Mombasa County in accordance with the Respondent's constitution and nomination rules
 - c. Each party to bear its own costs.
5. The 4th Respondent contended that the Claimant and the 1st to 3rd Respondents were colluding against him. The parties were directed to file their written consent on 20 May 2017.
6. On 22 May 2017, a consent recorded between the Claimant and the 1st to 3rd Respondents on 20 May 2017 was filed, wherein it was conceded that the

Complainant was not given sufficient notice of the hearing of the appeal before the IDR. The consent was drafted in the following terms:

- a. The said Appeal challenging the nomination of the 4th Respondent be and is referred back to the 3rd Respondent for determination within 48 hours in accordance with the 3rd Respondent's constitution and nomination rules.
- b. The Nomination Certificate issued by the 3rd Respondent to the 4th Respondent and submission of the Respondent's name to the Independent Electoral and Boundaries Commission be and is hereby suspended pending the outcome of the said determination in (a) above.
- c. Parties shall bear their own costs.

7. When the matter came up for hearing on 25 May 2017, the consent was amended to include the 4th Respondent as follows:

- a. The application and complaint dated 16 May 2017 be and is hereby settled as between the Complainant and the 1st to 3rd Respondents in the following terms:
 - a. Issuance of nomination certificate to the 4th Respondent be nullified.
 - b. Appeal be referred back to the 3rd Respondent to determine the party's candidate for Senator, Mombasa County in accordance with the Respondent's constitution and nomination rules. Notice of the IDR date and time be issued to the 4th Respondent before embarking on the same.
 - c. Each party bears its own costs.

Orders accordingly.

Dated at NAIROBI this 25th DAY of MAY 2017

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