



REPUBLIC OF KENYA
IN THE POLITICAL PARTIES DISPUTES TRIBUNAL
COMPLAINT NO.180 OF 2017

HON. SAMUEL MATHENGE NDITITU.....COMPLAINANT

-VERSUS -

HON. MARTHA WANGARE WANJIRA 1ST RESPONDENT
JUBILEE PARTY OF KENYA 2ND RESPONDENT

JUDGMENT

Summary of the Case

1. Both the Claimant and the 1st Respondent participated in the Jubilee nominations for Member of Parliament, Gilgil Constituency held on the 26th April 2017, where the Claimant was declared winner having garnered 14,383 votes against the 1st respondent's 14,031 votes. Aggrieved by the Claimants win, the 1st Respondent filed an appeal at the Jubilee National Appeal Board (NAT) on the ground that the elections were conducted in an environment that could not guarantee a free and fair process.
2. Upon hearing of the appeal, NAT nullified the results in 8 polling stations and proceeded to declare the 1st Respondent winner of the said nominations. This aggrieved the Claimant who filed this Complaint seeking that: this Tribunal set aside the decision of the NAT and proceed to declare him the winner of the Gilgil Constituency Jubilee Party nominations.

Claimant's case

3. The Claimant's case is that the act of nullifying results in the said 8 polling stations greatly prejudiced and disenfranchised the people of Gilgil Constituency. He refers to Article 38 of the Constitution; *Complaint No. 62 of 2017, Joshua Irungu v Thuita Mwangi* which held that the cancellation of results for Laikipia North Constituency, and failure to *order fresh a nomination exercise was irregular and unjustified and amounted to nothing but disenfranchisement to the people of Laikipia North Constituency.*
4. It is her submission that her agents ably represented the 1st Respondent in all the polling stations. She attached copies of the Constituency tallying sheets. She submits that the Rev. Mirriam Wamaitha Karuga was the one in charge of Gilgil Constituency and not Eliud Ndegwa, and that his assertion does not override the statutory role of a Returning Officer of overseeing elections.
5. He urges the Tribunal to overturn the Ruling dated 3rd May, 2017 as rendered by the NAT and proceed to confirm him as the duly nominated candidate for Member of Parliament, Gilgil Constituency.

1st Respondent's Submissions

6. The 1st Respondent's submission is that he was declared the winner by the Returning Officer and subsequently issued with the provisional nomination certificate. He argues that the applicant is guilty of elections offences. He refers to the NAT decision of 5th May, 2017, which proceedings, the Claimant attended, where it was held that the claimant was guilty of election offences: fraud. He argues that the NAT applied the doctrine of materiality on the effect of the 8 polling stations on the entire outcome. Hence, he prays that the Complaint be dismissed.

2nd Respondent case

7. The 2nd Respondent submits that the Complainant engaged in electoral malpractice in eight polling stations by rigging in his favour. That the Complainant as present at the delivery of the NAT ruling. Hence, it is false and inaccurate that he was declared a winner of the primaries. The nomination certificate he has is a forgery and that the Tribunal should not be used to perpetuate an illegality. It prays that the complaint be dismissed with costs and the decision of the NAT be upheld.

Issue for determination

8. The issue for determination is:
- (i) *Whether this Tribunal can set aside the decision and order of Jubilee NAT dated 3rd May 2017, nullifying the results of 8 polling stations and ordering for their exclusion in the final tally*

Determination

9. The issues for determination as set out by NAT were: *“whether the irregularities complained of amounted to substantial non-compliance with the Electoral laws and whether the irregularities if any affected the outcome of the nomination so as to warrant an order for re-tally and nullification of results declared in the 8 polling stations’*. The gist of this decision is that that there were glaring irregularities acknowledged by the 2nd respondent and which raises weighty issues that cannot be wished away.
10. Evaluating the record and submissions, it is evident that the NAT’s determination was that there were irregularities in 8 polling stations. We have to consider whether the irregularities affected the results. We note that the winner

(Claimant) of the election garnered 14, 383 votes with the person placed second (1st Respondent) garnering 14, 031 votes. The difference is 352 votes. Although in the 8 polling stations, the winner had 2,445 and the loser 1,010 votes, as a Tribunal we have noted that the NAT was dealing with a serious issue of electoral fraud in reaching the decision it reached. We have in the past (**Joseph Obiero Ndiege vs Orange Democratic Party & Another, Complaint No. 126 of 2017**) deferred to the party NAT decisions where we are satisfied with the soundness of the decision made as well as the nature of the matter under investigation.

11. We agree with the final decision of the NAT that by virtue of the irregularities found in the 8 polling stations justified the nullification of the results ought to be upheld and the 1st Respondent given the certificate of nomination.

12. Consequently, we make the following orders:

- 1) *The Complaint dated 2nd May, 2017 is hereby disallowed.*
- 2) *The Nomination Certificate issued to the 1st Respondent by the 2nd Respondent is hereby affirmed.*
- 3) *In the interest of party unity, each party to bear its own costs in this matter.*

13. Orders accordingly.

DATED AT NAIROBI THIS 12TH DAY OF MAY 2017.

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

