



REPUBLIC OF KENYA
IN THE POLITICAL PARTIES DISPUTES TRIBUNAL AT NAIROBI
COMPLAINT NO. 258 OF 2017

IBRAHIM ABDI ALI COMPLAINANT
VERSUS
NATIONAL ELECTIONS BOARD, ODM PARTY..... RESPONDENT

JUDGMENT

Summary of the case

1. The Complainant is in possession of the final Nomination Certificate issued to him on 29th April, 2017 as the nominee of the Orange Democratic Movement Party for the position of Member of County Assembly Galbet Ward, Garissa Township. The Complainant avers that the 1st Respondent has forwarded the name of a stranger to the Independent Electoral and Boundaries Commission. He thus seeks this Tribunal's intervention to compel the Respondent from submitting his name to IEBC.
2. This Tribunal issued Conservatory Orders on 15th May, 2017 when the matter first came before it. The Respondent was served and a return of service filed on 17th May, 2017. The Respondent neither appeared nor filed any documents.

Issue for determination

3. The only issue for determination is whether the Respondent should be compelled to forward the Complainant's name to IEBC as its nominee.

Analysis

4. We note that the Respondent has not put in a reply or even entered appearance. As to whether it had notice of this matter, there is an affidavit of service, by Felix Omondi Owino, a licensed court process server. Indeed there is sufficient return of service as the stamped copies of served copies are attached. Why the Respondent, a party that prides itself as being guided by tenets of rule of law and due process is hard to fathom. We have no hesitation in determining this matter as is.
5. From the pleadings, submissions and evidence adduced, it is clear that the Complainant had been directly nominated as the nominee for the position of Member of County Assembly Galbet Ward, Garissa Township. This was pursuant to the directions of the NAT after the Complainant had successfully lodged a complaint in regard to the failure of the Party' Election Board to hold party primaries. In implementation of the NAT decision, the NEB exercised its powers and directly nominated the Complainant. The nomination certificate is attached dated 29th April, 2017.
6. Unfortunately, it is the Complainant's case that the Respondent has forward or is about to forward the name of a stranger to IEBC for gazettelement. That he had a legitimate expectation that once he was issued with the nomination certificate, his name will be forwarded for gazettelement.
7. We are satisfied that the Complainant has a prima facie apprehension and unless this tribunal intervenes, he will be prejudiced. Consequently we make the following orders:

(a) The Memorandum of Claim dated 15th May, 2017 is hereby allowed.

(b) The ODM Party's National Elections Board is hereby restrained from submitting the name of any other person, other than the Complainant, Ibrahim Abdi Ali, to the Independent Electoral Boundaries Commission for gazettelement as the aspirant for the position of Member of County Assembly for Galbet Ward, Garissa Township Constituency, Garissa County.

(c) The Orange Democratic Movement Party is hereby directed to submit to the Independent Electoral and Boundaries Commission, the name of the Complainant, Ibrahim Abdi Ali, for gazettelement as the aspirant for the position of Member of County Assembly for Galbet Ward, Garissa Township Constituency, Garissa County.

(d) We make no order as to costs.

DATED IN NAIROBI THIS 17TH DAY OF MAY, 2017.

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