



REPUBLIC OF KENYA

IN THE POLITICAL PARTIES DISPUTES TRIBUNAL AT NAIROBI

COMPLAINT NO. 108 OF 2017

JAIRUS MULEI MUSYOKA.....COMPLAINANT

-VERSUS-

WIPER DEMOCRATIC MOVEMENT - KENYA.....1<sup>ST</sup> RESPONDENT

HON. JULIUS MAWATHE .....2<sup>ND</sup> RESPONDENT

RULING

Background

1. The Complaint filed before PPDT dated 6 April 2017 was decided vide our judgment delivered on 10th May 2017, where the Amended Complaint filed by the Complainant on 6 May 2017 was dismissed with no order as to costs. The said dismissal was based on the ground that in our analysis we found that the complainant had not substantiated the malpractices alleged to the required threshold.
2. The said dismissal prompted the review application filed by the Complainant, which review application is now under consideration.

The application

3. The application is by way of Notice of Motion dated 24th May 2017. The applicant seeks to move this Tribunal to restrain the IEBC from gazetting the name of the 2<sup>nd</sup> Respondent as a nominee for the 1<sup>st</sup> Respondent for the position of Member of the National Assembly, Embakasi Constituency. The applicant also seeks to move the Tribunal to review and correct the orders it made on 10<sup>th</sup> May 2017. The application is founded on the grounds that the Applicant has found new evidence which had not been brought to the attention of the Tribunal, but if had been considered a different decision would have been arrived at. The said new evidence, previously not before the Tribunal is a demonstration of how election materials were applied in a calculated move so as to mislead voters.
4. The application is supported by the Complainant's affidavit in which he avers that the respondents colluded to use different and faceless ballot papers to mislead the voters, the ballot paper bore different nomination dates and that ballot papers for Members of the National Assembly and Members of the County Assembly were different.

### Response

5. Mr. Sore for the Respondents opposed the application on the grounds that the evidence is not new to the extent that it would have been availed before. He further submitted that the annexures to the Applicant's supporting affidavit should not be relied upon as it does not show that photocopies were used. He relies on section 83 of the Election Act to submit that the irregularities noted cannot justify a nullification of the results.

### Analysis

6. From our analysis of the new evidence, we note that the said evidence relates to the irregularities in the nomination exercise. As we already pointed out in our judgment, it is upon the Complainant to show on a balance of probabilities that malpractice occurred. The new evidence adduced is however inconclusive and did not in our view meet the threshold for us to arrive at a different conclusion from the one in our judgment. Moreover, we still find that the Applicant could have, with some effort obtained in good time what he now claims in newly found evidence.

**Order**

7. Consequently, the notice of motion dated 24th May 2017 is hereby dismissed with no order as to costs.

**Dated at NAIROBI this 19th DAY of MAY 2017**

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