



REPUBLIC OF KENYA

IN THE POLITICAL PARTIES DISPUTES TRIBUNAL AT NAIROBI

COMPLAINT NO. 282 OF 2017

JAMES KIPRONO SANG.....1ST COMPLAINANT
HENRY KIPSANGA TIROP.....2ND COMPLAINANT
WILLIAM KIPLAGAT CHREUWON.....3RD COMPLAINANT
JOHN KIPTOO KORIR.....4TH COMPLAINANT
EZEKIAL KIPKOECH MUNAI.....5TH COMPLAINANT

-VERSUS-

KANU (PARTY NATIONAL ELECTIONS BOARD).....1ST RESPONDENT
KENYA AFRICAN NATIONAL UNION.....2ND RESPONDENT

AND

ELIAS KIPKORIR BETT.....1ST INTERESTED PARTY
JULIUS KIPNGETICH SUM.....2ND INTERESTED PARTY
NICHOLAS KIPKORIR.....3RD INTERESTED PARTY
NICHOLAS KIPKOSKEI BETT.....4TH INTERESTED PARTY
WESLEY KIPTOO RUTO.....5TH INTERESTED PARTY

JUDGMENT

Summary of the Complaint

1. The five Complainants moved this Tribunal by way of a Memorandum of Claim filed on 18th May 2017. The Complainants averred that on or about 9th May 2017, nomination certificates for the position of Member of County Assembly for Kapsabet, Kapsimotwo, Tinderet, Chemili/Chemase, and Chepkunyuk wards in Nandi County were issued to them respectively. That despite this allocation, the 1st Respondent allegedly forwarded new names to the Independent Electoral Boundaries Commission (IEBC) as the 2nd Respondent's nominees for the five wards. Further, that they have not received any formal communication from the 1st & 2nd Respondents explaining to them reasons for their said decision.
2. The Complainants further averred that they raised their concerns with the Respondents vide their letter to the 1st Respondent dated 6th May 2017 but they have received no response to date. They are now before this Tribunal seeking a declaration that they are the 2nd Respondent's *bona fide* candidates for the Member of County Assembly for the five wards in Nandi County.

The Response

3. The 1st Respondent, through a Replying Affidavit dated 23rd May 2017, averred that the nomination certificates issued to the five Complainants were issued in error due to the rush to comply with the IEBC timelines and that the Complainants were duly notified of the same by the 1st Respondent through a telephone call. Further, that the 1st Respondent sought to fix this error by forwarding the duly and properly nominated candidates for Member of County Assembly for the five wards to IEBC. The 1st Respondent disputed the Complainants' assertion that it had sent a letter of protest and averred that the Complainants had not raised any issue since notification of the same.
4. It was also the 1st Respondent's contention that it had requested the Complainants and the Interested Parties to build consensus and agree on a

common candidate for each of the wards in April 2017 and as the parties could not agree, the matter was left to the 1st Respondent. Further, that according to Article 24(9) of the KANU Constitution Revised 2012 and Part 5 paragraph 6 of the KANU Nomination Rules Amended 2017, direct nomination of a candidate remained the discretion of the 2nd Respondent. The 1st Respondent maintained that the Complainants were expressly bound by these provisions as members of the party.

Issue for determination

5. In our consideration, the main issue for determination is *whether the Complainants are the duly and properly nominated candidates for the 2nd Respondent for the position of Member of County Assembly for Kapsabet, Kapsimotwo, Tlinderet, Chemili/Chemase and Chepkunyuk wards in Nandi County.*

Analysis

6. This Tribunal recognizes that the 2nd Respondent has the discretion of direct nomination of a candidate of its choice according to Article 24(9) of the KANU Constitution Revised 2012 and Part 5 paragraph 6 of the KANU Nomination Rules Amended 2017.
7. However, from the evidence, pleadings and submissions on record, the 1st & 2nd Respondents have not convinced this Tribunal that there was a genuine error in the allocation of nomination certificates to the five Complainants in this matter. Noting that the said allocation was the initial direction adopted by the Respondents.
8. This Tribunal further notes that the 1st & 2nd Respondents have also failed to communicate to the five Complainants the reasons as to the decision to submit new names to IEBC after the issuance of nomination certificates to the

Complainants. Such failure cannot be brushed off and Section 4 and Section 6 of the Fair Administration Action Act of 2015 is clear in this regard. Any administrative action that affects the legal rights or interests of a person should supply the affected person with a statement of reasons in a manner that will facilitate them to lodge an appeal of the said decision. We therefore find that the 1st and 2nd Respondents did not treat the Complainants fairly in this matter.

Orders

9. Based on the foregoing, this Tribunal finds that the Memorandum of Claim dated 16th May 2017 has merit. As a consequence, this Tribunal makes the following orders:
- a) **THAT** the five Complainants in this matter be and are hereby declared as the 1st Respondent's bona fide candidates for the Member of County Assembly position in Kapsabet, Kapsimotwo, Tinderet, Chemili/Chemase and Chepkunyuk Wards in Nandi County;
 - b) **THAT** the 1st and 2nd Respondents be and are hereby ordered to submit the names of the five Complainants to the Independent Electoral Boundaries Commission as the 2nd Respondent's nominees for the Member of County Assembly position in the five wards;
 - c) **THAT** notification of this decision be submitted to IEBC
 - d) No orders as to costs.

DATED at NAIROBI this 25TH DAY of MAY 2017

1. M.O. Lwanga (Presiding Member)

2. Desma Nungo (Member)

3. Paul Ngotho (Member).....

4. Adelaide Mbithi (Member).....