



REPUBLIC OF KENYA
IN THE POLITICAL PARTIES DISPUTES TRIBUNAL
COMPLAINT NO. 259 OF 2017

JARED KAUNDA CHOKWE BARNsCOMPLAINANT

-VERSUS -

ORANGE DEMOCRATIC MOVEMENT 1ST RESPONDENT

DAVID KADENGE DABU.....2ND RESPONDENT

INDEPENDENT ELECTORAL BOUNDARIES COMMISSION..3RD RESPONDENT

JUDGMENT

1. Both the Complainant and 2nd Respondent participated in the nomination exercise for member of County Assembly, Malindi Town Ward, Kilifi County held on the 22nd April 2017. The Complainant avers that he was declared the winner having garnered 760 votes against the 2nd Respondents 680 votes. Following this he was issued with a Provision Certificate dated 23rd April 2017 and a nomination certificate dated 29th April 2017.
2. The Complainant avers that despite be declared the winner the 1st Respondent proceeded to issue two nomination certificates one to the 2nd Respondent and himself. It is his submission that his certificate was issued at the tallying centre upon being declared the winner whereas that issued to the 2nd Respondent was issued at an unknown private place. He relies upon a video footage of the

Returning Officer declaring him winner and him giving his remarks upon being declared the winner.

3. The Complainant sets out the following issues for determination namely; whether the claimant is the bona fide winner of the nomination exercise and whether the 2nd respondent was involved in malpractice.
4. It's the Complainant averment that despite engaging the 1st Respondent to have the matter resolved, the 1st Respondent has failed to resolve the grievance. To support his claim the Complainant relies upon Article 35, 38, and 47 of the Constitution.

The Respondent case

5. The 2nd Respondent case is that he was declared winner, and accorded the nomination certificate. Further that this Tribunal has no jurisdiction to hear this complaint for reason that the Complainant has failed to exhaust the internal party dispute resolution mechanism of the Party. He avers that there has been inordinate delay in filing this complaint, which the Complainant has failed to explain.
6. The 2nd Respondent submits that this application is frivolous, lacks merit and should be dismissed with costs.
7. There was no appearance by the 1st Respondent.

Analysis

8. The 2nd Respondent has challenged the jurisdiction of the Tribunal to determine this complaint. His submission is that the Complainant failed to exhaust the internal dispute mechanism of the party.
9. The Complainant herein is challenging the issuance of the nomination certificate to the 2nd Respondent. It is his submission that on the 5th of May 2017 it became known to him that the 1st Respondent had issued a nomination certificate by the

2nd Respondent. Upon learning of this, he wrote to the party/1st Respondent lodging his complaint and urging the party to resolve the same. He relies upon a copy of the letter dated 8th May 2017. He states that to date the 1st Respondent has never acted on this complaint.

10. In light of this we find that by writing to the Party, the Complainant made an attempt to engage the Party in resolving the dispute. Indeed if the 1st Respondent was to act on the dispute the presumption is, the same would have been resolved. We therefore find that the Complainant made an attempt to engage the Party internal dispute mechanism and thus, we have the jurisdiction to determine this complaint.
11. Having establish that we have jurisdiction to hear and determine this Complaint we proceed to address ourselves on who the bona fide winner of the nomination exercise is? Both the Complainant and the 1st Respondent have been granted the nomination certificate. We have perused the nomination certificates and note that; both are dated 29th April 2017 and have been signed by the same persons.
12. We also note that as part of the record, the Complainant has adduced a copy of the provisional nomination certificate issued on the 23rd April 2017, by the Returning Officer of Kilifi. The provisional nomination certificate shows that the Complainant emerged the winner having garnered 750 votes. In addition he relies on video footing evidence to showing the Returning Officer presenting the nomination certificate and the complainant's acceptance speech.
13. On the other hand the 2nd Respondent submitted that he was declared winner with a majority of the votes and issued with the provisional nomination certificate. He neither provides us with a copy of the provisional nomination certificate nor the number of votes garnered.

14. We find that the Complainant has adduced sufficient evidence to prove that he was declared the winner and was presented with a provisional nomination certificate at the close of the nomination exercise.
15. In light of the above we proceed to order that;
 - a. *The Complaint dated 12th May 2017 is hereby allowed*
 - b. *The nomination certificate issued to the 2nd Respondent is hereby annulled.*
 - c. *The Orange Democratic Movement Party, National Election Board is hereby directed to issue Jared Kaunda Chokwe Barns, the Complainant with the nomination certificate for Member of County Assembly Malindi Town Ward, Kilifi County within the next 24 hours of publication of this judgment.*
 - d. *In the interest of party unity there will be no orders as to costs.*

Orders accordingly.

DATED AT NAIROBI THIS 19TH DAY OF MAY 2017.

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