



THE REPUBLIC OF KENYA
IN THE POLITICAL PARTIES DISPUTES TRIBUNAL AT NAIROBI
COMPLAINT 99 OF 2017

JOHN ISAAC OGANGA.....COMPLAINANT

VERSUS

ORANGE DEMOCRATIC MOVEMENT PARTY.....1ST RESPONDENT

PATRICK GOMBE SOWE.....2ND RESPONDENT

JUDGMENT

Background

1. The claim dated 5 May 2017 related to the elections for Member of the County Assembly, Marachi Ward, Busia County. The Claimant was aggrieved by the manner in which the nomination exercise, held on 13 April 2017, was conducted. He filed an appeal with the Busia County ODM Dispute Resolution and Appeals Tribunal (hereinafter IDRMM) on 14 April 2017. In support of his appeal, he cited several malpractices, including voter intimidation, lack of ballot material, ballot stuffing and transfer of election material from one polling station to another. Both the Claimant and the 2nd Respondent were present at the hearing.
2. After considering the allegations and witness testimony, the IDRMM nullified the nomination of the 3rd Respondent as the nominee for Marachi Ward Member of the County Assembly, and directed the Returning Officer to issue a nomination certificate to the Claimant. This decision was issued on 17 April 2017.

3. On 5 May 2017, the Claimant approached this Tribunal praying for an order compelling the 1st Respondent to issue the Claimant with a nomination certificate as directed by the IDRM. He challenged the 1st Respondent's failure to implement the IDRM decision and to enter the 2nd Respondent's name on the list of winners. The Claimant also contended that the 2nd Respondent's provisional certificate, which had been nullified by the IDRM, had been accepted at the 1st Respondent's headquarters. He prayed that this Tribunal revoke the 2nd Respondent's nomination certificate, the removal of the 2nd Respondent's name from the list of winners of the 1st Respondent and that the 1st Respondent be directed to submit the Claimant's name to the IEBC as the party nominee for the said seat.
4. The 2nd Respondent denied the allegations raised at the IDRM and even participation in the IDRM process. He asserted that the Complainant had neither served the appeal nor notified him of the appeal process. Without admitting the occurrence of malpractices, the 2nd Respondent contended that if at all any malpractices had occurred, they had affected the results of all the candidates. It was therefore the 2nd Respondent's contention that they could not have formed the basis for annulment of the nomination exercise as the Complainant did not demonstrate how the outcome of the election, if at all, was affected.
5. In response to the 2nd Respondent's contention that he had not been notified of the IDRM process, the Claimant adduced letter dated 15 April 2017 addressed by the 2nd Respondent to the 1st Respondent's Election Board. The letter was written in response to the Claimant's petition to the IDRM. The Claimant also noted that an appeal of the IDRM decision dated 17 April 2017 was not lodged within 48 hours as required by the party constitution. The Claimant reiterated their prayer that the decision of the IDRM be upheld and the 1st Respondent compelled to comply.

Issue for Determination

6. From a review of the material on record, it appears to us that the only issue for determination is whether the IDRM decision dated 17 April 2017 ought to be upheld and enforced.

Analysis

7. The Claimant seeks to enforce the IDRM decision on the basis that it was fair and that it was not challenged at the party level in accordance with the party constitution. Whereas the 2nd Respondent contended that he was neither aware, of nor party to, the IDRM process, the IDRM decision points to the contrary. The decision refers to the 2nd Respondent having been represented by a Mr Nengo and to his having filed a response on the same day the appeal was filed. The letter dated 15 April 2017, which the 2nd Respondent faults for being addressed to the Elections Board and not the Appeals Board, is proof that the 2nd Respondent was aware of and took part in the IDRM process. His allegation that he was denied fair hearing at the IDRM cannot stand. It is noteworthy, as pointed out by the Claimant, that the 2nd Respondent did not file anything on oath in response to the claim. His allegations are therefore implausible.
8. Having found that the IDRM process was carried out in accordance with the party constitution and that the resultant decision was not challenged within the timelines stipulated in the party constitution, it behoves the Tribunal to refrain from disturbing it.

Orders

9. In light of the foregoing, we uphold the decision of the ODM Dispute Resolution and Appeals Tribunal Busia County decision of 17 April 2017.

10. An order is hereby issued to the 2nd Respondent to forthwith issue a nomination certificate for Member of the County Assembly, Marachi Ward, to the Claimant.

11. In the interests of party unity, we direct that each party bears its own costs.

Dated at NAIROBI this 10th DAY of MAY 2017

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