



REPUBLIC OF KENYA
POLITICAL PARTIES DISPUTES TRIBUNAL
COMPLAINT NO. 241 OF 2017

JOHN ORWA.....COMPLAINANT

VERSUS

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

ODM NATIONAL ELECTIONS BOARD.....2ND RESPONDENT

JUDGMENT

Summary of the Case

1. The Claimant was a contestant in the party primaries of the 1st Respondent held on 24th April 2017 for the position of the Member of County Assembly, North Kanyamkago Ward, Migori County and was declared the winner of same but had been not issued with the final nomination certificate despite there being no case challenging his win.
2. As a result, the Claimant lodged his complaint with the 1st Respondent's County Appeals Tribunal, which held in favour of the Claimant and revoked the provisional nomination certificates that had been issued to other persons and ordered the 1st Respondent to be issued with the final nomination certificate.
3. The Claimant further claimed that despite the said directive by the 1st Respondent's County Appeals Tribunal, the 1st Respondent did not only decline to issue the Claimant with the final nomination certificate but also refused to incorporate the

Claimant in the list of nominees that was submitted to the Independent Elections and Boundaries Commission (IEBC) on the 11th May 2017.

4. For the reasons stated above, the Claimant approached this Tribunal for the following reliefs:
 - a) An order compelling the 1st and 2nd Respondent to honour the decision of the 1st Respondent's County Appeals Tribunal.
 - b) A declaration that the Claimant was the bone fide 1st Respondent's nominee for the position of the Member of County Assembly, North Kanyamkago Ward, Migori County.
 - c) A declaration that the award of the final nomination certificate to any other person other than the Claimant as the candidate for the position of the Member of County Assembly, North Kanyamkago Ward, Migori County, if any, is null and void.
 - d) An order compelling the 1st Respondent to issue the Claimant with the final nomination certificate for the position of the Member of County Assembly, North Kanyamkago Ward, Migori County.
 - e) An order compelling the 1st Respondent to include the Claimant's name in the IEBC list of nominees for the August 8 general elections in respect of North Kanyamkago Ward, Migori County.
5. Come the 12th May 2017, the Tribunal ordered the Claimant to serve the Respondents and scheduled the case for hearing on 14th May 2017. To confirm service, one Johnstone Nzivu swore two affidavits dated 13th and 15th May 2017, respectively to that effect. However, in spite of all these, time passed without the Respondents filing their responses and replies leaving this Tribunal without option but to proceed and determine this matter in consideration of the strict timelines for nominations.

Issue for Determination

6. The primary issue is whether the 1st Respondent was justified in not issuing the Claimant with the final nomination certificate and refusing to include his name in the list of nominees submitted to the IEBC.

Analysis

7. The whole issue in this case turns our attention to the provisions of *Article 38* of the *Constitution of Kenya, 2010*, which guarantees the right of every citizen to make political choices, which includes the rights to form and participate in the activities of a political party. In this regard, one has the right to take part in a free, fair and regular elections based on universal suffrage and the free expression of will to vie for any office of any political party to which such a person is a member.
8. To this end, *Article 91 (1) (d)* of the Constitution specifically obligates political parties in Kenya to abide by the democratic principles of good governance, promote and practice democracy through regular, fair and free elections within the party.
9. To fulfil these constitutional requirements, *section 9* of the *Political Parties Act, 2011* read together with the *Second Schedule* of the same sets out the key issues that must be contained in the constitutions of all duly registered political parties in Kenya. The relevant point for our purposes in the matter is the rule that a political party constitution must establish guidelines for, among other things, the nomination of candidates for elections.
10. The nomination procedures for the 1st Respondent in *rule 18.8 (iv)* demands that a winner of a party primary exercise ought to be issued with the final nomination certificate within 7 days of the date of conclusion of the party primary in question. The rule stipulates,

“Upon receipt of the certified copy of the certificate of return from the County Elections Appeal Board and where no appeal has been lodged at

the National Elections Appeals Tribunal, the NEB shall proceed to process and issue the nomination certificate to the declared winner within seven (7) days of the primaries or determination of a dispute."

11. Indeed, the Claimant had legitimate reasons to expect, in the absence of any dispute pending against him, the 1st Respondent to issue him with the final nomination and forward his name to the IEBC as the 1st Respondent's duly nominated candidate for the position of the Member of County Assembly, North Kanyamkago Ward, Migori County. More so, after the 1st Respondent's County Appeals Tribunal held in favour of the Claimant, revoked the provisional nomination certificates already issued to other persons and ordered the 1st Respondent to issue the Claimant with the final nomination certificate.

12. For the reasons advanced above, this Tribunal is persuaded by the Claimant's arguments that the 1st Respondent went against its own rules when it failed to issue the Claimant with the final nomination certificate and declined to include the Claimant's name in the list of nominees submitted to the IEBC for purposes of August 8 polls. In other words, we find no justification in the actions of the 1st Respondent.

Orders

13. In the premises, this Tribunal orders as follows:

- a) That the Claimant's case be and is hereby allowed.*
- b) That the 1st Respondent be and is hereby restrained from issuing the final nomination certificate for the position of the Member of County Assembly, North Kanyamkago Ward, Migori County to any other person other than the Claimant herein.*
- c) That, in the event that the 1st Respondent has issued the final nomination certificate to any other individual for the position of the Member of County*

Assembly, North Kanyamkago Ward, Migori County, other than the Claimant, the same is hereby declared null and void.

- d) That the 1st Respondent be and is hereby ordered to issue the Claimant with the final nomination certificate for the position of the Member of County Assembly, North Kanyamkago Ward, Migori County and to include the Claimant's name in the list of IEBC nominees within 12 hours of the pronouncement of this judgment.*
- e) The 1st Respondent be and is hereby ordered to bear for the Claimant's cost of this suit. Orders accordingly.*

DATED AT NAIROBI THIS 18TH DAY OF MAY 2017

1. Kyalo Mbobu

Chairman

2. James Atema

Member

3. Hassan Abdi

Member