



REPUBLIC OF KENYA

IN THE POLITICAL PARTIES TRIBUNAL AT NAIROBI

COMPLAINT NO. 95 OF 2017

HON. ENG. JOHN KIRAGU CHEGE ..... COMPLAINANT

VERSUS

GEOFFERY N. MUYA ..... 1<sup>ST</sup> RESPONDENT

PETER M. MWATHI ..... 2<sup>ND</sup> RESPONDENT

JUBILEE PARTY ..... 3<sup>RD</sup> RESPONDENT

JUDGMENT

Summary of the case

1. The Complainant was a participant in the Jubilee Party nomination primaries for the position of Member of Parliament for Limuru Constituency, Kiambu County held on 25<sup>th</sup> April, 2017. It is common ground that on the day of the exercise, the designated Returning Officer, Muya Geoffrey Njoroge, was not available. As a consequence, Jimmy Munyao was the person who announced and declared the results.
2. The Complainant was aggrieved by the announcement of the 2<sup>nd</sup> Respondent as the winner upon the conclusion of the nomination exercise, an announcement made by a 'new' Returning Officer, Jimmy Munyao. An appeal was filed with the Party's NAT on 27<sup>th</sup> April, 2017. The NAT's decision was delivered on 4<sup>th</sup>

May, 2017 dismissing the appeal. Aggrieved by that decision, the Complainant moved this Tribunal. In his amended statement of Complaint, he seeks the following orders:

*(a) That a declaration be issued that (the Complainant) was the successful candidate in the Jubilee nominations for the member of the National Assembly Limuru Constituency which was held on 25<sup>th</sup> April, 2017.*

*(b) That the Jubilee Party be directed to issue to (the Complainant) the nomination certificate and not to issue the same to any other person.*

3. Simultaneously filed with this Complaint, was a notice of motion application under certificate of urgency seeking interim orders. The matter was certified urgent and an interim order for status quo to be maintained issued. In response, the 2<sup>nd</sup> respondent filed a notice of preliminary objection dated on 8<sup>th</sup> May challenging this Tribunal's jurisdiction to hear and determine this Complaint.
4. Due to the exigencies of time, oral hearing was dispensed with in this matter. It was agreed by consent of all parties that parties were at liberty to file 2 pages submissions and the Tribunal to determine the matter on the basis of the Complainant, affidavits on record and the written submissions.

#### Submissions

5. The crux of this complaint is that the Complainant is dissatisfied with the appointment of Jimmy Munyao as the Returning Officer in the Jubilee Party nominations primaries for Limuru Constituency, Kiambu County and the declaration of the winner. He refers to the Party Rules, particularly Rule 32 on the roles of the Returning Officer, and submits that a Returning Officer cannot have a limited role of announcing results only. Further, that only the National Elections Board can appoint a returning Officer.

6. Secondly, that a winner of an election can only be determined by submission of duly nominated forms from all the polling stations and confirmed at the constituency level. These forms, he urges, were not present when the declaration of results was made. That Geoffrey Muya, the designated Returning Officer presented the Tallying sheet which shows that the Complainant won. Muya Geoffrey Njoroge deponed to an affidavit that he had to briefly leave the voting venue to attend to a relative at Kikuyu Hospital. and on his way back he was called by Deputy County Commissioner, Kiprop David, and told that results had been announced. The Complainant also argues that the NAT's decision was not reasoned hence he could not ascertain the basis of its determination.
7. The 2<sup>nd</sup> Respondent filed a replying affidavit dated 8<sup>th</sup> May 2017. He submits that the Complainant has changed his case in the appeal before the NAT. Before NAT, the compliant said he garnered 14, 790 but has now changed and alleges 19, 077; and averred that the Returning Officer could not be traced. That this proclivity to approbate and reprobate is not just illegal but in bad faith. Results of all other seats were announced by new Returning Officer and none of the other election results has been impugned.
8. The 3<sup>rd</sup> respondent challenged this Tribunal's jurisdiction. That before the NAT the appeal was on the basis of lack of integrity of the process due to the absence and conduct of 1<sup>st</sup> respondent and declaration of results by a replacement of Returning Officer without verification. On the contrary, that before this Tribunal the complaint is fresh: validity of results announced by Jimmy Munyao. Referred to case of *Francis Mutuku v Wiper Democratic Movement and 12 others [2015] eKLR* on exhaustion of internal party dispute resolution processes. Through an affidavit of its legal counsel, the 3<sup>rd</sup> Respondent argues that the Returning Officer could not be traced for a larger part of 25<sup>th</sup> And 26<sup>th</sup> April 2017,

hence the County Election Coordinator appointed a new Returning Officer, Jimmy Munyao, with a limited mandate of announcing the results. It was also urged that the Complainant conceded before the NAT that he had 14, 790 votes against while the 2<sup>nd</sup> Respondent had 19,977 votes.

*Issues for determination*

9. The following falls for determination:

- (i) *Whether the Tribunal has jurisdiction.*
- (ii) *Whether the appointment of a new Returning officer was proper.*
- (iii) *The Impact of that appointment on the announced results.*
- (iv) *Relief.*

*Determination*

10. The Tribunal is guided by the case of *Mukisa Biscuit Manufacturing Co Ltd –vs. - West End Distributors, (1969) EA 696* that a preliminary objection should be on a pure point of law. To the extent that the preliminary objection raised here is based on the fact that new evidence, facts and prayers are sought, it cannot be a competent preliminary objection. There is no pure point of law. Whether new facts have been introduced or not, it is for the Tribunal to decide on evaluation of the record, hence that is a factual issue. The crux of the appeal before the NAT as evident from the annexures to the Complaint was the announcement of the results by Mr. Jimmy Munyao. That issue is still live here. We find that the preliminary objection has no merit.

*Whether the appointment of a new Returning Officer was proper*

11. It is not in dispute that on the day of the nomination exercise, the designated Returning Officer, at some time was unavailable. The 3<sup>rd</sup> respondent submits that

a replacement was appointed. The Complainant challenged this before the NAT but that appeal was dismissed for lack of merit. It is also not in dispute that the other elective seats that had candidates elected via the same process were not disputed.

12. The Complainant has cited Rule 32 of the Party's Nominations Rules on the role of Returning Officer. However, the rules of the Party should be read holistically. PART 1B describe the role of the County Elections Board as being interalia: the primary organ to which powers and functions of NEC, as relates to nominations and elections are delegated. We find no fault in the County Elections Coordinator's appointment of an 'interim' Returning officer to announce the results. This appointment has in no way been shown to have affected the results. There has been no evidence, satisfactorily determined by either the NAT or this Tribunal that before the announcement, there were other intervening malpractices or irregularities that affected the result. We find that this Complaint has no merit.

13. As a consequence we make the following orders:

- (i) The preliminary objection dated 8<sup>th</sup> May, 2017 is disallowed.*
- (ii) The amended statement of Complaint dated 6<sup>th</sup> May, 2017 is dismissed.*
- (iii) In the interest of Party unity, each party shall bear its own costs.*

14. Orders accordingly.

**DATED and DELIVERED AT NAIROBI this 9<sup>TH</sup> DAY OF MAY 2017**

- 1. Kyalo Mbobu .....**  
**Chairman**
- 2. James Atema .....**  
**Member**

**3. Hassan Abdi** .....

**Member4**