



REPUBLIC OF KENYA

POLITICAL PARTIES DISPUTES TRIBUNAL

COMPLAINT NO. 83 OF 2017

JOHN MATUNGA MIRERI.....COMPLAINANT

-VERSUS-

ORANGE DEMOCRATIC PARTY OF KENYA.....1ST RESPONDENT

ISAYA OYOO KOYAP.....2ND RESPONDENT

JUDGMENT

Summary of the Complaint

[1] This Complaint concerns the Orange Democratic Movement (ODM) party nomination exercise for the position of Member of County Assembly, West Kamagak Ward in Homa Bay County held on 24th April 2017 where the 2nd Respondent was declared the winner. Aggrieved, the Complainant lodged an appeal with the County Elections Appeals Tribunal (hereinafter referred to as IDRМ) challenging the outcome of the said nomination exercise. The party’s IDRМ found in his favour and directed the nomination certificate to be issued to him.

Jurisdiction

[2] The 2nd Respondent submitted that the complaint is premature as the 1st Complainant is yet to exhaust the party’s IDRМ process. The 2nd Respondent also challenges the authenticity of the IDRМ minutes submitted by the Complainant as evidence that indeed an IDRМ process was conducted. We refer to the County IDRМ process as averred by the Complainant and we are satisfied that the minutes are authentic and that this Tribunal is properly seized of the matter.

Issues for determination

[3] The sole issue for determination is *whether the 2nd Respondent was the rightful winner of the nominations for the position of Member of County Assembly for West Kamagak Ward, Homa Bay County.*

Analysis and determination

[4] Upon perusal of the record before us, we have found no return, declaration, provisional certificate or nomination certificate to enable this Tribunal determine conclusively who won the elections.

[5] As the party organ charged with the determination of disputes, the County Elections Appeals Tribunal has the mandate to hear and determine disputes filed before it. Its decision dated 28th April 2017 held that during the nomination exercise, voters from three polling stations, that is, Wire, Agoro sare and Ranyienya, which are the strongholds of the petitioner were turned away. They alluded to the nomination process being ‘fishy’ as the Complainant was at first declared the winner before the Returning Officer finally declared the 2nd Respondent as winner. They held that as there was a thin margin of error between the top two candidates, they directed the party’s nomination certificate to be issued to the Complainant.

[6] We refer to the 1st Respondent’s Replying Affidavit dated 7th May 2017 that the party has a right to field the candidate of its choice in terms of Article 38 of the Constitution. This assertion in view of the finding of the County Elections Appeals Tribunal buttresses the suspicions alluded to in its decision upon which it premised its findings.

Reliefs

As a consequence, we make the following orders:

- a) THAT the complaint dated 5th May 2017 has merit;
- b) We uphold the decision of the Orange Democratic Party National Appeals Tribunal dated 28th April 2017 that the Complainant, John Matunga Mireri is the duly elected nominee for the party;
- c) In the interest of Party Unity, we order that each party bear its own costs in this matter.

DATED and DELIVERED AT NAIROBI this 9TH DAY of MAY 2017

1. M. O. Lwanga (Presiding Member)

2. **Desma Nungo (Member)**
3. **Paul Ngotho (Member)**..... ..
4. **Dr. Adelaide Mbithi (Member)**