



REPUBLIC OF KENYA

IN THE POLITICAL PARTIES DISPUTES TRIBUNAL AT NAIROBI

COMPLAINT NO. 271 OF 2017

JONATHAN BARASSA KANE.....CLAIMANT/RESPONDENT

-VERSUS-

AMANI NATIONAL CONGRESS.....RESPONDENT/APPLICANT

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RULING

*Summary of the Application*

1. The Notice of Motion application dated 29<sup>th</sup> May 2017 is an application for a review and setting aside of the Tribunal's orders dated 25<sup>th</sup> April 2017. The orders in question restrain the Respondent from issuing the nomination certificate for position of Member of National Assembly, Webuye West Constituency to a Philip Wamuto or any other person and directs the party to issue the nomination certificate to the Claimant.
2. It is the Respondent/Applicant's contention that there is an error on the face of the record as the Tribunal did not consider its Replying Affidavit sworn by one Godfrey Osotsi and filed on 22<sup>nd</sup> May 2017 while making its determination. Further, that the Claimant/Respondent has been gazetted by the Independent Electoral and Boundaries Commission (IEBC) as an independent candidate for the aforementioned position. The Respondent/Applicant argues that as the

Claimant/Respondent is no longer a member of the party, the Respondent/Applicant has no obligation towards him.

3. The Respondent/Applicant has relied on correspondence from the Office of the Registrar of Political Parties dated 2<sup>nd</sup> June 2017, addressed to the Respondent's advocates confirming that the Claimant is 'partyless'. He has also adduced a copy of the gazette notice dated 19<sup>th</sup> May 2017 confirming that the Claimant has been gazetted as an independent candidate for the position of Member of National Assembly, Webuye West Constituency.
4. This Tribunal notes that the Claimant/Respondent did not enter appearance in the hearing of this application and neither did he file any submissions in response to the present application. We refer to the affidavit of service of one Joel Munyao Kisilu dated 7<sup>th</sup> June 2017 that confirms effective service of the Notice of Motion application and Respondent/Applicant's submissions on the Claimant/Respondent's advocates on the 5<sup>th</sup> and 7<sup>th</sup> of June 2017 respectively.

***Issue for determination***

5. We have considered the pleadings filed, evidence adduced and the submissions made before this Tribunal. The sole issue that emerges for determination is *whether the Tribunal's orders dated 25<sup>th</sup> April 2017 should be reviewed and/or set aside.*

***Analysis***

6. The Respondent/Applicant contends that prior to the issuance of the Tribunal's orders dated 25<sup>th</sup> May 2017, it duly filed its Replying Affidavit on 22<sup>nd</sup> April 2017. The Respondent has adduced a copy of this Replying Affidavit allegedly filed and stamped by this Tribunal on 22<sup>nd</sup> April 2017. The pleadings on record indicate that the Respondent was granted up to 24<sup>th</sup> May 2017 at 2pm to file its response. However, upon perusal of the record, we find no response duly filed by the Respondent. We also note that no affidavit of service is on record to indicate that the Claimant/Respondent was also served with the response in

question. We are therefore not convinced that this Replying Affidavit was effectively served and duly filed before this Tribunal.

7. It is also the Respondent/Applicant's contention that the Claimant/Respondent is now running for the position of Member of National Assembly, Webuye West Constituency as an independent candidate. The notice of his gazettelement by IEBC dated 19<sup>th</sup> May 2017 has been adduced before this Tribunal. The Respondent/Applicant has also adduced correspondence from the Office of the Registrar of Political Parties confirming that the Claimant/Respondent was partyless as of 31<sup>st</sup> May 2017. This evidence remains uncontroverted. On this basis, we are convinced that the Claimant is no longer interested in vying for the aforementioned position as a nominee of the Respondent/Applicant. This finding therefore compels the Tribunal to vacate and set aside its orders dated 25<sup>th</sup> May 2017

***Orders***

8. Accordingly, the Notice of Motion dated 29<sup>th</sup> May 2017 is hereby allowed. Consequently, this Tribunal makes the following orders:
- a) that the Tribunal's orders dated 25<sup>th</sup> May 2017 be and are hereby set aside;
  - b) that the Respondent/Applicant is hereby ordered to determine its candidate for the position of Member of National Assembly, Webuye West Constituency within 24 hours and to forthwith submit the name of its nominee to the Independent Electoral Boundaries Commission.
  - c) In the interest of party unity, each party to bear its own costs of the application.

**DATED at NAIROBI this 8<sup>TH</sup> DAY of MAY 2017**

**1. Kyalo Mbobu (Chairman) .....**

2. Desma Nungo (Member) .....
3. Paul Ngotho (Member).....