



REPUBLIC OF KENYA
IN THE POLITICAL PARTIES TRIBUNAL AT NAIROBI
COMPLAINT NO. 261 OF 2017

JOSEPH IBRAHIM MUSYOKI.....1ST COMPLAINANT
VERSUS
WIPER DEMOCRATIC MOVEMENT-KENYA.....1ST RESPONDENT
KILONZI MAUNDU..... 2ND RESPONDENT

JUDGMENT

Introduction

1. The Claimant avers that he was the winner of the 1st Respondent's nomination exercise for member of County Assembly, Nuu Ward, Mwingi Central Constituency. The 2nd Respondent's appeal to the 1st Respondent seeking to overturn his victory was dismissed. The decision was subsequently reviewed, but he was never made a party to the review proceedings.
2. Claimant later learned that his name was missing from the list of successful candidates. There was no response to his complaints to the party. On 19th May, 2017 we allowed the Claimant's claim and confirmed his nomination as the 1st Respondent's nominee for the position in contest. On 25th May, we dismissed the 1st Respondent's application for setting aside of the judgment. Wakiaga J of the High Court referred the matter back to us for a re-hearing.
3. The High Court had directed that the matter be heard by a differently constituted bench; excluding Milly Lwanga, Paul Ngotho and Dr Adelaide Mbithi. On 2nd June 2016 we drew the attention of counsel appearing in this matter to that specific order. However, considering the quorum hitch and tight timelines in this matter, by

consent, all parties waived their right to be heard by a differently constituted bench and instead agreed to proceed before this bench as constituted.

4. The 2nd Respondent insists that this Tribunal is not in the place of the National Elections Board and cannot therefore resolve the outstanding issues relating to the review of the decision of the NEB. He submits that the party was right in reviewing the decision in light of the alleged irregularities attributable to the Complainant.
5. We are satisfied that the impugned decision dated 8th May, 2017 was made without hearing the complainant. This decision was therefore made contrary to the basic rules of natural justice and is hereby set aside. We are satisfied that the material on which the review was made is still available before the 1st Respondent. We rely on the decision of the High Court in *Wiper Democratic Movement – Kenya v Peterson Mittau & 3 others Election Appeal No 9 of 2017* for the proposition that the NEB is capable of reviewing its own decisions.
6. The order we make is as follows:
 - (a) **A declaration be and is hereby issued that the 1st Respondent’s decision dated 8th May, 2017 is null and void and of no effect in law**
 - (b) **A declaration be and is hereby issued that the nomination certificate issued to the 2nd Respondent is null and void and of no effect in law**
 - (c) **The 1st Respondent be and is hereby directed to hear both parties and review its decision dated 8th May, 2017, within the next 48 hours. Upon compliance with this order, the 1st Respondent be and is hereby directed further to forthwith submit to the IEBC the name of its candidate for Nuu Ward, Mwingi Central Constituency within 72 hours of the pronouncement of this judgment.**
 - (d) **In the interest of party unity let each party bear its own costs.**

Dated at Nairobi this 2nd day of June 2017

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Kyalo Mbobu (Chairperson)

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Paul Ngotho (Member)

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Desma Nungo (Member)