



REPUBLIC OF KENYA
IN THE POLITICAL PARTIES DISPUTES TRIBUNAL AT NAIROBI
COMPLAINT NO. 141 OF 2017

JOSEPH OLUOCH AWUOR.....COMPLAINANT

-VERSUS-

ORANGE DEMOCRATIC MOVEMENT.....1ST RESPONDENT

WILLIAM KINYANYI ONYANGO.....2ND RESPONDENT

JUDGMENT

Summary of the Complaint

1. The present complaint concerns the 1st Respondent's nominations exercise for the position of Member of the County Assembly, Yala Township Ward, Siaya County held on 25th April 2017. In the Memorandum of Claim dated 8th May 2017, the Complainant averred that he emerged the winner of the said exercise but that the Returning Officer proceeded to irregularly issue the nomination certificate to the 2nd Respondent. He therefore sought an order declaring the nomination certificate issued to the 2nd Respondent as invalid and an order directing the 1st Respondent to issue him with the final nomination certificate.
2. On 8th May 2017, the Tribunal stood over the matter generally to allow the parties to amend their pleadings to show their attempt at internal dispute resolution mechanism (IDRM) in compliance with section 40(2) of the Political Parties Act No. 11 of 2011.

3. Vide a Notice of Motion dated 22nd May 2017, the 2nd Respondent averred before this Tribunal that IDRM was attempted in respect to the said nomination exercise but that the same was not successful. That despite being in possession of the final nomination certificate, the 1st Respondent submitted the name of the Complainant as its nominee for the aforementioned position.
4. It is also the 2nd Respondent's contention that the Complainant herein is now running as an Independent Candidate and also as the 1st Respondent's nominee for the said position. The 2nd Respondent therefore seeks an order declaring him as the 1st Respondent's duly nominated candidate for the position of Member of the County Assembly, Yala Township Ward, Siaya County.
5. From the record, the Tribunal notes that the 1st Respondent did not enter appearance in this matter.

Issue for determination

6. In our consideration, the following are the two main issues for determination:
 - a. *Whether the Tribunal has jurisdiction in accordance with section 40(2) of the Political Parties Act No. 11 of 2011*
 - b. *Whether it is the Claimant or the 2nd Respondent who is the 1st Respondent's duly nominated candidate for the position of Member of County Assembly for Yala Township, Siaya County*

Analysis

7. The 2nd Respondent has demonstrated that he indeed attempted the party's internal dispute resolution mechanism to resolve his dispute. He asserted that despite his repeated applications to the 1st Respondent, his appeal was not heard. It is apparent that section 40(2) of the Political Parties Act was complied with. On this basis, this Tribunal finds that it is properly seized of the matter and proceeds to interrogate the second issue for determination.

8. It is clear from the record before us, that both the Claimant and the 2nd Respondent claimed to have emerged winners at the nomination exercise held on 25th April 2017. The 2nd Respondent supported his assertions by submitting copies of his interim and final provisional certificates issued by the 1st Respondent. He further alleged that the Claimant submitted his (Claimant's) name to the Independent Electoral Boundaries Commission as an independent candidate. The 2nd Respondent however, did not submit any proof in support of this assertion.
9. In any event, this Tribunal notes that the Claimant's reliance on a tally attributed to the Returning Officer is suspect. The only aspirant who signed the said results tally is the Claimant, yet there were other aspirants for the said seat. The Claimant's win can therefore not be conclusively determined on this basis.

Orders

10. The upshot is that the Claimant has not convinced this Tribunal that he is the winner of the nomination exercise, while the 2nd Respondent has, on a balance of probabilities shown that he was properly issued with a nomination certificate.

Thus we hereby order:

- a) **THAT** that the 2nd Respondent be and is hereby declared as the 1st Respondent's nominee for the position of Member of County Assembly, Yala Township, Siaya County;
- b) **THAT** the 2nd Respondent serve forthwith this decision on the 1st Respondent, and a notification issue to the Independent Electoral Boundaries Commissions accordingly.

DATED at NAIROBI this 25TH DAY of MAY 2017

1. M.O. Lwanga(Presiding Member)

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