



**REPUBLIC OF KENYA**  
**THE POLITICAL PARTIES DISPUTES TRIBUNAL**  
**COMPLAINT NO. 231 OF 2017**

JUSPER OMONDI OGUTA.....COMPLAINANT

-VERSUS-

PETER OJWANG KAULA.....1<sup>ST</sup> RESPONDENT

ORANGE DEMOCRATIC MOVEMENT .....2<sup>ND</sup> RESPONDENT

ODM NATIONAL ELECTIONS BOARD.....3<sup>RD</sup> RESPONDENT

JULIAS OTIENO AMBA..... INTERESTED PARTY

**JUDGMENT**

**Summary of the Complaint**

1. This complaint relates to the nomination of the 1<sup>st</sup> Respondent's nomination for the position of Member of County Assembly for Wang' Chieng Ward, Homa Bay County. By a petition dated 10<sup>th</sup> May 2017, the Claimant filed this complaint as a registered voter, member of the 2<sup>nd</sup> Respondent and agent for the Interested Party. The Claimant brings the petition on his own behalf and on behalf of members of the 2<sup>nd</sup> Respondent who voted for the Interested Party and are now disenfranchised by the nomination of the 1<sup>st</sup> Respondent who they never voted for.
2. The Claimant avers that the first party primaries for the said ward were conducted on 24<sup>th</sup> April 2014 upon which the Interested Party was declared the

winner and issued with a Provisional Certificate by the Retuning Officer, Mr. Bernard Onyango. The 1<sup>st</sup> Respondent was fourth. The Claimant further avers that the nominations were nullified and a repeat ordered for 30<sup>th</sup> April 2017. Repeat nomination were held and the Interested Party again won with the 1<sup>st</sup> Respondent being second. Again, the Interested Party was issued with a provisional Nomination Certificate dated 30<sup>th</sup> April, 2017.

3. The election of the Interested Party not having been contested through the party's internal dispute resolution mechanism, the Claimant avers that he learnt through social media that the 1<sup>st</sup> Respondent has been issued with the Nomination Certificate dated 29<sup>th</sup> April 2017. The Claimant takes issue with the date of the nomination certificate being before the date of the repeat nomination exercise. The Claimant attempted to lodge his complaint with the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents in vain as the complaint was declined.

### **The Response**

4. The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents did not appear or participate in the proceedings. An affidavit of service was filed by Kenvine O. Ouma, an Advocate of the High Court of Kenya who effected service upon the Respondents and the Interested Party.
5. The 1<sup>st</sup> Respondent filed a relying affidavit on 13<sup>th</sup> May 2017. In his affidavit, the 2<sup>nd</sup> Respondent acknowledges that the Interested Party was a contestant in the nomination exercise who has since resigned from the 2<sup>nd</sup> Respondent to contest in the upcoming general elections as an independent candidate. The 2<sup>nd</sup> Respondent faults the Claimant for not pursuing the dispute with the relevant 2<sup>nd</sup> Respondent's organ being the County Appeals Tribunal (CAT). In response to the letters of complaint dated 9<sup>th</sup> and 11<sup>th</sup> May 2017, the 1<sup>st</sup> Respondent argues

that the letters were lodged to a body with no jurisdiction and in any event such letters were not availed before the Tribunal for consideration.

6. Of note is that the 2<sup>nd</sup> Respondent makes no mention of any repeat nomination and reiterates his win as declared in the nomination exercise held on 24<sup>th</sup> April 2017. The 1<sup>st</sup> Respondent asserts his claim over the nomination certificate issued to him and avers that the complaint is merely aimed at undermining the 1<sup>st</sup> Respondent and gain mileage, the Interested Party having lost in the nomination process and conceded defeat.

**Issues for determination**

7. From the written submissions, numerous issues arise for determining jurisdiction being one of the issues, we proceed to first and foremost determine whether or not we have jurisdiction to hear and determining the matter.

*a) Whether the Tribunal has jurisdiction to hear and determine the complaint.*

8. The 1<sup>st</sup> Respondent contends that the Tribunal lacks jurisdiction under Section 40 (2) of the Political Parties Act, the Claimant having not pursued the internal dispute resolution mechanism. The Claimant relies on the High Court Election Petition Appeal No. 5 of 2017 – **Joseph Mboya Nyamuthe Vs. The ODM & Another** in which Onyiego J, held that a party need not invoke internal dispute resolution mechanism in a dispute relating to party primaries under Section 40 (1) (f a) of the Political Parties Act. The Tribunal took note of the decision as well as the decision in Election Petition Appeal No. 7 of 2017 **Hezron J. Opiyo Asudi & Another Vs. Peter Anyang Nyong'o & 4 Others** where Kimaru J, found that internal dispute resolution mechanism was a requisite step.

9. With such conflicting decisions from the High Court, the Tribunal continues to adopt its position that a party must demonstrate an attempt at **IDRM**. The 1<sup>st</sup> Respondent pointed out that the Interested Party lodged letters of complaints albeit to the wrong party organs. As we held in **PPDT Complaint No. 85 of 2017 – Gabriel Umidha Olenje & 4 Others Vs – ODM & Another**, in the promotion of political party's internal democracy & autonomy where the complainant approaches this Tribunal before exhaustion of **IDRM**, the Tribunal will decline to assume jurisdiction. A Complainant has to individually resort to **IDRM** regardless of whether the political party is seized of the facts in dispute courtesy of other disputants. The Claimant has individually not invoked **IDRM**. As such, we find that we lack the requisite jurisdiction to determine the dispute and down our tools at this point.

**Orders/Reliefs**

10. Having come to the above conclusion, the petition filed on 10<sup>th</sup> May 2017 is struck out with no orders as to costs.

**DATED and DELIVERED AT NAIROBI this 13<sup>TH</sup> DAY of MAY 2017**

1. **M. O. Lwanga .....(Presiding Member)**

2. **Desma Nungo .....(Member)**

3. **Paul Ngotho.....(Member)**

**4. Dr. Adelaide Mbithi .....(Member)**