



REPUBLIC OF KENYA
IN THE POLITICAL PARTIES TRIBUNAL AT NAIROBI
COMPLAINT NO. 97 OF 2017

IN THE MATTER OF A DISPUTE BETWEEN

KAPANGA PETER WERUNGA.....COMPLAINANT

VERSUS

**FORUM FOR THE RESTORATION
OF DEMOCRACY-KENYA.....1ST RESPONDENT**

JAMES MUKWE LUSWETI.....2ND RESPONDENT

JUDGMENT

1. This claim arises out of the nomination exercise held on 26th April 2017, for Member of Parliament, in Kabuchai Constituency, Bungoma County. The complainant and the 2nd Respondent were aspirants for the position of Member of Parliament. The 2nd Respondent was declared the winner and later issued with a nomination certificate. The claimant avers that the nomination exercise was not fair just and transparent. The irregularities pleaded are that no party register was available or used, the polls officers used were not properly trained,

- incidences of threats and violence to the complainant's agents, bribery, ballot stuffing, use of un-serialized ballot papers and that no returns in terms of Form 5a were filed as required under the 1st Respondents Nomination rules.
2. The Complainant filed a complaint to the 1st Respondents dispute resolution board (**IDRM**) and his complaint was dismissed. The Complainant is aggrieved by the IDRM process as well as the nomination exercise and filed his statement of claim and supporting affidavit all filed on 6th May 2017. The complaint is also supported by affidavits of the complainants polling agents namely Peter Wanyonyi Kikwe, Kennedy Wanyonyi Lukosi, Daniel Wangila Masinde and Christopher Shibusse all dated 4th May 2017.
 3. The complaint is opposed. The 1st Respondent has filed a Replying Affidavit dated 8th May 2017. The affidavit is sworn by Dr. Eseli Simiyu, the Secretary General of the 1st Respondent. The 1st Respondent's case is that the complainant's issues were adequately addressed by the **IDRM** and they were found to lack merit. The 1st Respondent maintains that the 2nd Respondent was the winner and the nomination exercise reflected the will of the people.
 4. The 2nd Respondent also filed a replying affidavit on 8th May 2017. He avers that the complainant has not availed any tangible evidence to support the complaint and it is not for the Tribunal to make inferences. The nomination exercise largely reflects the will of the people of Kabuchai and the current complaint is an afterthought.

Issues for determination

- a) **Whether the nomination was irregular and in contravention of the 1st Respondent's Constitution.**

- b) Whether the hearing conducted by the party's dispute resolution board was flawed.**
- c) What reliefs if any should be issued.**

A. Whether the nomination was irregular & in contravention of the 1st Respondents Constitution.

5. The complainant particularized irregularities in paragraph 6 of the statement of claim and averred contravention of part 2 clause 10 of the nomination rules. We have also considered the affidavits supplied by the complainant's agents. It is possible that the incidences of irregularities occurred but unfortunately we are unable to conclusively determine them on the basis of the documents in our possession. For instance, the Complainant alleges incidences of voter bribery but the photograph adduced to support the allegation does not prove it. We note that the declarations made by Presiding Officers were signed by agents. For instance, the form 5 for West Nalondo was signed by Daniel Masinde who is the Complainant's agent as per the affidavit filed by him in these proceedings.

B. Whether the proceedings before the party's dispute resolution mechanism board were flawed.

6. The Complainant has particularized his grievances as to two conduct of the hearings at **IDRM** in paragraph 21 of the Supporting Affidavit. These includes the fact that the Complainant and the 2nd Respondent were summoned and appeared separately and the claimant was therefore never given an opportunity to respond to the 2nd Respondents allegations.

7. We note from the NAT judgement that both parties appeared for the hearing. We have to opposing statements that we are unable to conclusively inquire into the truth of this position. We however take note that the complainant was afforded with an opportunity to be heard on the complaint. We are unable therefore to find that the proceedings before the dispute resolution mechanism board were flawed as alleged.

Orders:

Having reached the above findings, the claim is dismissed with no order as to costs.

DATED, SIGNED and DELIVERED at NAIROBI this 10th day of May 2017.

Milly Lwanga OdongoPresiding Member

Paul NgothoMember

Dr. Adelaide MbithiMember

Desma Nungo.....Member