



REPUBLIC OF KENYA
IN THE POLITICAL PARTIES DISPUTES TRIBUNAL AT NAIROBI
COMPLAINT NO. 190 OF 2017

KEFA WAFULA KARORI WERE.....COMPLAINANT
VERSUS
TUWEI MAGDALENE CHEMUTAI.....1ST RESPONDENT
NATIONAL ELECTIONS BOARD.....2ND RESPONDENT
JUBILEE PARTY.....3RD RESPONDENT
THE DIRECTOR OF ELECTIONS, JUBILEE PARTY.....4TH RESPONDENT

RULING

Summary of the Case

1. The Claimant had initially contested the Kapomboi Ward in Kwanza Constituency primaries on the 3rd Respondent’s ticket, held on 26th April, 2017. The Claimant, aggrieved by the conduct of those nominations, challenged the results in this Tribunal. On 16th May, 2017, the Tribunal made a number orders among them the retallying of votes or in the alternative; the 3rd Respondent was to conduct fresh primaries.
2. The Claimant claimed that he visited the 3rd Respondent’s offices to find out the steps the latter was taking in order to comply with the Tribunal’s order but to his disappointment there were no plans to either retally or to hold fresh as ordered. Consequently, aggrieved by the 3rd Respondent’s failures the Claimant moved to this Tribunal for appropriate reliefs including citing the Respondents for the offence of contempt.

3. In reply, the Respondents claimed that the retallying was done within 72 hours in accordance with the said Tribunal's judgment. The Respondents also contended that the orders for contempt were unfounded and that this Tribunal lacked jurisdiction to entertain the orders sought. Hence, they called for the dismissal of the complaint herein.
4. The Respondents based their arguments on the High Court decision in *The Secretary General (KANU) vs. Hon. Salah Yakub Farah Election Petition Appeal No. 13 of 2017*. In the case, the learned Judge J.L Onguto observed that this Tribunal's jurisdiction to punish for contempt under *section 6* of the *Contempt of Court Act* was limited to contempt "*on the face of the court and no more.*"

Issues for Determination

5. The primary issues for determination are two: first is whether this Tribunal has jurisdiction and the second one is, what are the appropriate remedies?

Analysis

6. We recently had the occasion to address ourselves to the judicial status of this Tribunal in *Complaint No 40 of 2017 Benard Muia Tom Kiala v Wiper Democratic Movement Kenya & another*, emphasized the need to obey the orders given by this Tribunal. We observed at *at para 28* that:

We wish to reiterate that the people of Kenya have delegated their sovereign authority under Article 3(c) of the Constitution to this Tribunal and that it would be a misuse of that sovereign authority for this Tribunal to spend scant public resources presiding over political party disputes only to issue orders in vain. Once a dispute has been submitted to this Tribunal, political parties and their members should have the confidence that this Tribunal shall decide that dispute impartially, independently and

according to the law. Political parties and their members would not bring their disputes before this Tribunal if they learnt that parties are free to either obey or disobey Tribunal orders at will.

7. That said, we hasten we point out the power to punish for contempt is what enables a court or Tribunal to remain standing as a constitutional authority. However, we must first satisfy ourselves that we have the jurisdiction to punish for contempt of court or we would be bound to down our tools. See *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] KLR 1*.
8. Against this background, the Respondents submitted that this Tribunal does not have the jurisdiction to punish the alleged contempt in this matter because subordinate courts could only deal with contempt of court only on the face of the court. They rely on the High Court decision in the case of *The Secretary General (KANU) vs. Hon. Salah Yakub Farah Election Petition Appeal No. 13 of 2017*.
9. In this regard, it behoves us to distinguish between the circumstances of this case from the High Court decision in the case of *The Secretary General (KANU) vs. Hon. Salah Yakub Farah Election Petition Appeal No. 13 of 2017*. In the *KANU* case, the learned Judge held that this Tribunal's jurisdiction under section 6 of the Contempt of Court Act, 2016 is limited to punishing contempt "*on the face of the court and no more.*"
10. In this case, an application has been made to have the Respondents cited for *ex facie curiae* or contempt committed outside court and involving the disobedience of the orders of this Tribunal dated 16th May, 2017. The whole issue here turns on the powers of this Tribunal, which, by virtue of *Article 169 (1) (d)* of the *Constitution, 2010*, has the same status as a subordinate court. This is a fact affirmed by the *KANU case* cited by the Respondents at paragraph 22.

11. Accordingly, *section 41(3)* of the *Political Parties Act, 2011* provides that the orders of this Tribunal's decisions are enforceable in same manner as the decisions of a Magistrate's court. In this regard, *section 10 (1) and (3)* of the *Magistrates' Courts Act* is in the following terms:

10 (1) "Subject to the provisions of any other law, the Court shall have power to punish for contempt."

10 (3) "In the case of civil proceedings, the willful disobedience of any judgment, decree, direction, order, or other process of a court or wilful breach of an undertaking given to a court constitutes contempt of court."

12. In view of the above, we hold that the contempt before us in the instant application is contempt in procedure, also commonly known as civil contempt, and as such the relevant law is the *section 10 (1) and (3)* of the *Magistrates' Courts Act*.

13. Consequently, this Tribunal has jurisdiction to cite for contempt in case of disobedience of its judgment, ruling, order or decision. We disagree with the Respondents contention that we lack jurisdiction to entertain the Claimant's prayers sought in this regard.

Appropriate Relief

14. That being the case, we now proceed to address the issue of appropriate reliefs. Our attention has been drawn to this issue because of the Claimant's averments that neither retallying nor fresh party primaries for Kapomboni Ward was carried out. In response, the Respondents insisted that retallying was done within the required 72 hours and even attached a copy of the minutes of the meeting that was held to do the retally.

15. However, we note that said minutes do not contain, show or indicate whether the Claimant attended the retallying process. In the absence of such evidence, we are

inclined to agree with the Claimant that no retallying was done and neither were there plans to hold fresh as ordered by the Tribunal. The retallying process, in view of *Article 47* of the *Constitution*, was an administrative action and as such, the doer of the action, the Respondents herein, were bound to afford any individual who is affected by the proposed action, an expeditious, efficient, lawful, reasonable and procedurally fair opportunity.

16. Clearly, the Claimant was affected by the retallying by dint of being one of the contestants in the primaries. Hence, he ought to have been accorded the opportunity to be part of the process either in person or through his agents. Consequently, the failure to heed to such a vital requirement vitiates the retallying process that is, if indeed it was done as alleged by the Respondents.

Orders

17. In the premises, we allow the Notice of Motion dated 22th May 2017 and make the following orders:

- a) That the purported retallying of the votes cast at Kapomboi Ward, Kwanza Constituency, Trans Nzoia County after 16th May 2017 be and is hereby declared null and void.*
- b) That the 3rd Respondent be and is hereby ordered to conduct fresh nomination for the position of Member of County Assembly Kapomboi Ward within 72 hours of this ruling.*
- c) That the nomination certificate issued to the 1st Respondent be and is hereby declared null and void.*
- d) That this Ruling be forthwith served upon the Independent Electoral and Boundaries Commission for implementation.*
- e) That the 3rd Respondent be and is hereby ordered to bear the cost of this application. Orders accordingly.*

DATED AT NAIROBI THIS 2ND DAY OF JUNE 2017

Kyalo Mbobu (Chairman)

James Atema (Member).....

Hassan Abdi (Member).....