



REPUBLIC OF KENYA  
IN THE POLITICAL PARTIES DISPUTES TRIBUNAL AT NAIROBI  
COMPLAINT NO. 260 OF 2017

KEN NUMBERS KANINI KIAGIRI alias  
KENNETH KANINI KIAGIRI.....COMPLAINANT

VERSUS

JUBILEE PARTY THRO THE  
NATIONAL ELECTIONS BOARD.....1<sup>ST</sup> RESPONDENT  
ERIC ASERA AMBUCHU.....2<sup>ND</sup> RESPONDENT  
DEDAN GICHENGA MUGO.....3<sup>RD</sup> RESPONDENT  
WANJIKU NDUNGU.....1<sup>ST</sup> INTERESTED PARTY

AND

MILTON LUCHERI.....2<sup>ND</sup> INTERESTED PARTY

RULING

*Background on Procedural History*

1. This dispute relates to the 1<sup>st</sup> Respondent's nominations exercise for Member of National Assembly, Westlands Constituency held on 26<sup>th</sup> April 2017. Following the said nominations exercise, the Complainant was aggrieved by the manner in which the exercise had been conducted. He filed Complaint No. 260 of 2017 before this Tribunal. The said complaint was determined on 2<sup>nd</sup> June 2017 with the finding that:

- (a) the 1<sup>st</sup> Respondent recount, in the presence of all candidates or their agents, all the votes cast for Ken Numbers Kanini Kiagiri and Kenneth Kiagiri Kanini and to tally them, in favour of the Complainant herein,

**in determining the 1<sup>st</sup> Respondent's candidate for  
Member of National Assembly, Westlands  
Constituency within 24 hours from the pronouncement  
of the said judgment;**

**(b) In default of order (a) above, the 1<sup>st</sup> Respondent  
organize and conduct a fresh nomination exercise for  
for member of national assembly, Westlands  
Constituency within the next 72 hours from the  
pronouncement of the judgment.**

2. Following this decision, the parties to the Complaint found that a recount was untenable, because the ballot papers and electoral materials had been destroyed. The 1<sup>st</sup> Respondent in compliance with our orders, commenced the preparation for a fresh nomination exercise which was to be held on 7<sup>th</sup> June, 2017. A circular and Short Message Service (SMS) texts were circulated to this effect to several persons including the proposed interested parties.
3. The two proposed Interested Parties aver that as a result of said SMS communication, they incurred enormous expenses in preparing for the intended repeat nomination. It is their contention that as a result, they accrued a legitimate expectation that they would get a chance to participate in the repeat polls. However, their legitimate expectation was soon thwarted because the repeat polls were never conducted. Upon enquiry, the two proposed Interested Parties learnt that the matter had been settled among the parties to the initial dispute so that fresh nominations would no longer be necessary. The 1<sup>st</sup> Respondent did not bother to communicate this development formally to the two intended interested parties.

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4. The two intended Interested Parties now seek orders compelling the 1<sup>st</sup> Respondent to undertake a fresh party primary for the position of Member of National Assembly, Westlands Constituency.
5. The 3<sup>rd</sup> Respondent opposed the application and submitted that the orders of 2<sup>nd</sup> June, 2017 had been compromised by the consent entered between him and the Complainant herein while proceeding with their IDR process. He contended that the consent which had been lodged with the party superseded the need for the 1<sup>st</sup> Respondent to conduct any primaries and that the only shortfall was that the parties did not return to this Tribunal to record their consent.
6. It was further submitted that at the stage of the said consent the proposed Interested Parties were no longer party to the dispute having contended with the initial IDR process which led to the Complaint No. 260 of 2017 being filed.

***Analysis***

7. Section 40(2) of the Political Parties Act 2011 requires that before a matter is determined by the PPDT, the party's internal dispute resolution mechanism must have been instituted. This premise finds basis in Article 159 of the Constitution which requires this Tribunal to promote alternative means of dispute resolution including reconciliation, mediation and arbitration. Thus, this Tribunal is inclined to uphold such consent as determined by the parties to the suit in order to institutionalize internal party dispute resolution mechanisms as well as promote cohesion among party members.
8. Further, we note that Chapter XV of the 1<sup>st</sup> Respondent's Nomination Rules provides for consensus as a method of conducting a party primary in the following terms:

**“The party shall in areas of special interest where nominations cannot be conducted issue direct nomination certificate, or where there is more than one aspirant, by consensus or any other appropriate means agreed select one among them to be nominated.”**

9. It is in light of these provisions in the 1<sup>st</sup> Respondent’s rules and constitution that effort was applied by the parties to determine a nominee through consensus building. The efforts to build consensus in that instant led to the way forward in determining the party’s ticket holder.
10. It is key to note that the two proposed Interested Parties are only applying to be enjoined now. At this stage, the process of determining a nominee for the position in issue has been determined. Enjoining the two proposed Interested Parties into the said complaint cannot sustain.
11. In addition, the discontent presenting to the two proposed interested parties has been occasioned by a new process conducted within their political party to which they have not instituted IDR. PPDT’s jurisdiction therefore cannot be evoked.
12. The complaint dated 8<sup>th</sup> June is hereby dismissed with no order as to costs.

**Dated and delivered at Nairobi this 12<sup>th</sup> day of June 2017**

1. M.O. Lwanga ..... (Presiding Member)
2. Desma Nungo .....(Member)
3. Paul Ngotho .....(Member)