



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

KEN NUMBERS KIAGIRI formerly

KENNETH KANINI KIAGIRI.....COMPLAINANT

VERSUS

JUBILEE PARTY.....1ST RESPONDENT

ERIC ASERA AMBUCHE.....2ND RESPONDENT

DEDAN GICHONGA MUGO.....3RD RESPONDENT

JUDGMENT

1. This suit is straight forward. The suit was rather curiously commenced by a Notice of Motion application dated 10th May, 2017. The gist of the complaint is that the 1st Respondent described the Complainant by the wrong name on the ballot papers thus leading to confusion among voters and his supporters.
2. The Complainant submits that he had by a Deed Poll dated 31st March 2017 formally and absolutely renounced and abandoned the use of his former name Kenneth Kanini Kiagiri and in its place assumed and adopted the name of Ken Numbers Kiagiri. The Deed Poll was published in Gazette Notice Number 3086 of 31st March, 2017.
3. However, the 1st Respondent referred to him on the ballots by a name he had already renounced - Kenneth Kanini Kiagiri. Other ballot papers had his name as Ken Numbers Kanini Kiagiri.
4. His voters were confused and he suffered a disadvantage.

5. The 1st Respondent opposes the application and urges it to be dismissed. It's core submission is that the Complainant did not notify the 1st Respondent that he had changed his name vide the Gazette Notice. Also, there was no evidence of any irregularity as the ballot paper used in the nominations only referred to the Complainant as Kiagiri Kenneth Kanini. The ballot was very clear in its reference to the Complainant as an aspirant for the Westlands Constituency seat.
6. There is only one issue for determination in this claim. That is whether or not there was an error in the ballot papers which prejudiced the Complainant. The Gazette Notice Number 3086 of 31st March, 2017 is irrefutable evidence to the whole world that the Complaint had renounced the name of Kenneth Kanini Kiagiri and in its place assumed and adopted Ken Numbers Kiagiri. However, even by the 1st Respondent's own admission, the ballot papers used in the nominations of 26th April, 2017 had the Complainant's former name. The candidate on the ballot papers was a stranger to the process. The Respondents cannot be heard to say that he had not been prejudiced.
7. We are inclined to believe the evidence of Eric Asera Ambuche that he acted as presiding officer in the nominations and encountered the confusion in the Complainant's name. We hold that the Complainant was likely to be, and in fact was prejudiced by the mistake in his name. This mistake in our view was so far reaching, that it affected the outcome of the nominations.
8. The order we make is as follows:
 - (a) **An order be and is hereby issued directing the 1st Respondent to recount, in the presence of all candidates or their agents, all the votes cast for Ken Numbers Kanini Kiagiri alias Kenneth Kiagiri Kanini and to tally them, in favour of the Complainant herein, in determining the 1st Respondent's**

- candidate for member of National Assembly, Westlands Constituency within the next 72 hours from the pronouncement of this judgment.
- (b) In default of order (a) above, the 1st Respondent is directed to organize and conduct a fresh nomination exercise for Member of National Assembly, Westlands Constituency, Nairobi County, within the next 72 hours from the pronouncement of this judgment.
- (c) In the interest of party unity let each party bear its own costs.

Dated at Nairobi this 2nd day of June 2017

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Kyalo Mbobu (Chairperson)

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Paul Ngotho (Member)

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Desma Nungo (Member)