



REPUBLIC OF KENYA

IN THE POLITICAL PARTIES TRIBUNAL AT NAIROBI

COMPLAINT NO. 137 OF 2017

KENNEDY ONAM ..... COMPLAINANT

VERSUS

ORANGE DEMOCRATIC PARTY ..... 1<sup>ST</sup> RESPONDENT

THE APPEALS TRIBUNAL ODM ..... 2<sup>ND</sup> RESPONDENT

APPOLO MBOYA ..... 3<sup>RD</sup> RESPONDENT

GEOFREY OKUTO ..... 4<sup>TH</sup> RESPONDENT

-AS CONSOLIDATED WITH-

COMPLAINT NO. 177 OF 2017

GEOFREY OKUTO OTIENO ..... COMPLAINANT

VERSUS

ORANGE DEMOCRATIC MOVEMENT ..... 1<sup>ST</sup> RESPONDENT

GEORGE OCHOLA ..... 2<sup>ND</sup> RESPONDENT

AND

KENNEDY ONAM ..... INTERESTED PARTY

JUDGMENT

Summary of the case

1. The two Complaints were separately filed on 8<sup>th</sup> May, 2017. As they relate to the same subject matter, they were by consent of all parties consolidated for the

purpose of determination with *Complaint No. 137 of 2017* designated as the lead file and *Complaint No. 177 of 2017* taken as a response to *Complaint No. 137 of 2017*. It was further consented that this Tribunal proceeds to determine the matter on the basis of the pleadings on the record. Hence, parties shall be referred to as referenced in *Complaint No. 137 of 2017*.

2. This matter emanates from the ODM nomination primaries held on 30<sup>th</sup> April, 2017 for Member of County Assembly, Hospital Ward, Mathare Constituency, Nairobi County. At the conclusion of the nomination exercise, Geoffrey Okuto Otieno was declared the winner by the Returning Officer, Mr Jared Owade, and issued with a provisional nomination certificate.
3. The Complainant, Kennedy Onam, was aggrieved by this announcement and filed a petition with the ODM Party. The petition was heard on 2<sup>nd</sup> May 2017 and to date no verdict has been forthcoming. Hence the filing of *Complaint No. 137 of 2017*. The 4<sup>th</sup> Respondent, Geoffrey Otieno Okuto, on his part, is aggrieved that since being declared the winner, he has not been issued with a final nomination certificate, hence filed *Complaint No 177 of 2017*.

#### Submissions

4. The Complainant submits that when the Presiding Officer, Mildred Ochanda announced the results he had garnered 437 votes against the 4<sup>th</sup> Respondent, Geofery Okuto's 343. This announcement caused commotion leading to closure of the polling station. When order was restored, a recount was done and it emerged that the Complainant had lost 110 of his votes. Attempts at verification by the Presiding Officer were unheeded by the police who ordered that ballot boxes be taken to the tallying centre at St. Theresa's school. Later Geoffrey Okuto was declared the winner. He filed a petition with the Party which was heard but to date, no verdict has been forthcoming. He prays for orders that the 1st

Respondent releases the verdict or in the alternative, the 1<sup>st</sup> Respondent be compelled to issue him with a nomination certificate.

5. The 1<sup>st</sup> Respondent, ODM Party, filed a Replying Affidavit on 9<sup>th</sup> May, 2017 deponed by Anthony Muturi, its legal officer. It concedes that there was indeed chaos after the counting of the votes in Hospital Ward, Mathare Constituency. The chaos was investigated by the Party and all contestants given a fair hearing and avers that the Party will take the necessary action. He regrets the delay in rendering the verdict which he attributes to the magnitude of complaints filed with the 1<sup>st</sup> Respondent. The Summary of the winning candidates by the Returning Officer Jared Owade shows that for Hospital ward, the winner was Geoffrey Otieno Okuto, the 4<sup>th</sup> Respondent with 351 votes.
6. Geoffrey Otieno Okuto, in his *Complaint No. 177 of 2017*, urges that he is the duly nominated and winner of the nomination exercise having been so declared by the Returning Officer and issued with a provisional nomination certificate. He concedes to having participated in the petition filed at the 1<sup>st</sup> Respondent's County Assembly Appeals Tribunal (CAT) by Kennedy Onam, and that CAT directed the matter to be transferred to the National Elections Board. The crux of his Complaint is that since that time the 1<sup>st</sup> Respondent has declined to issue him with the final nomination certificate. He contends that he is shocked to learn that he has been stripped off the nomination certificate which has been issued to one, George Ochola who was placed third in the nomination exercise. That NEB has since ceased to operate and the 1<sup>st</sup> respondent has declined to accept the complaint filed before it.
7. He seeks a declaration that the issuance of the nomination certificate by the 1<sup>st</sup> Respondent to George Ochola is illegal, and that the same be withdrawn and

quashed and this Tribunal order the 1<sup>st</sup> Respondent to declare him the winner and issue him with a nomination certificate.

**Issues for determination**

8. Upon evaluation of the matter before us, we have come to a conclusion that the sole issue for determination;
  - (i) *Who is entitled to be issued with the nomination certificate for the MCA, Hospital Hill Ward, Mathare Constituency, Nairobi County.*

**Determination**

9. The gist of Kennedy Onam's petition to the CAT, was that chaos erupted and interfered with the nomination process. The police intervened and when the Presiding Officer insisted on the need for the verification of votes, the police barred her. Outrightly, this is irregular as the role of the police is to maintain law and order and is not to interfere with the election process. Once they had calmed the situation down, the police had no veto over the decisions of the electoral official, in this case the Presiding Officer. The Complainant deponed that as a consequence of this violence he lost 110 votes when the counting was repeated. The order for verification by the Presiding Officer could have helped debunk this allegation.
10. The 1<sup>st</sup> Respondent agrees that due to the magnitude of cases that they were dealing with, the decision in respect of the 1<sup>st</sup> Respondent's appeal has not been rendered. The 1<sup>st</sup> Respondent agrees that there indeed was violence. The Party has stated that it agrees with Kennedy Onam *in toto*. Hence, the averments of Kennedy Onam are confirmed by the Party.

11. Geoffrey Okuto Otieno is aggrieved that while he was declared the winner and issued with a provisional certificate, apparently a nomination certificate has been issued to George Ochola, a person who was third in the nomination primaries. At page 56 of the Record of his Complaint he gives the final tally with the top three garnering: George Ochola 210, Geoffrey Okuto 252 and Kennedy Onam 323.
12. This Tribunal is baffled as to the premises by which George Ochola was awarded a nomination certificate, given that he was definitely not the winner. The decision of CAT, as conceded by the Party, had not been rendered, hence could not form the basis for the award of the certificate to George Ochola. While Mr. George Ochola has not appeared in this matter, the presence of the 1<sup>st</sup> Respondent as the issuer of the nomination certificate mitigates against his absence.
13. Having evaluated the Record and the evidence, taking into account the concession of the 1<sup>st</sup> Respondent as to the violence, we make the following orders:

*(1) The Complaint No. 177 of 2017 dated 9<sup>th</sup> May 2017 is dismissed.*

*(2) Complaint No. 137 of 2017 dated 8<sup>th</sup> May 2017 is allowed in the following specific terms:*

*(a) The provisional nomination certificate issued by the 1<sup>st</sup> Respondent's Returning Officer, Jared Owade, to Geoffrey Okuto Otieno is hereby revoked.*

*(b) The Provisional certificate issued by the 1<sup>st</sup> Respondent to George Ochola is hereby revoked.*

*(c) The Complainant, Kennedy Onam is declared the duly nominated Member of County Assembly Hospital Ward, Mathare Constituency.*

*(d) The 1<sup>st</sup> Respondent is directed to issue a final Nomination Certificate to Kennedy Onam as the duly nominated Orange Democratic Movement (ODM) nominee for Member of County Assembly Hospital Ward, Mathare Constituency within the next 12 hours of this Judgment.*

*(3) In the interests of Party unity, each party shall bear its own costs.*

14. Orders accordingly.

**DATED and DELIVERED AT NAIROBI this 11<sup>TH</sup> DAY OF MAY 2017**

**Kyalo Mbobu .....**

**Chairman**

**James Atema.....**

**Member**

**Hassan Abdi.....**

**Member**