



THE REPUBLIC OF KENYA
IN THE POLITICAL PARTIES DISPUTES TRIBUNAL AT NAIROBI
COMPLAINT NO. 29 OF 2017

MAGERO GUMO.....COMPLAINANT

VERSUS

AMANI NATIONAL CONGRESS.....1ST RESPONDENT

MUSALIA MUDAVADI.....2ND RESPONDENT

BERNARD SHILIBWA.....1ST INTERESTED PARTY

BABA NDEGE WANDIRI.....2ND INTERESTED PARTY

JUDGMENT

Background

1. The Applicant was the 1st Interested Party in the present complaint. His application dated 9 May 2017 relates to the decision of this Tribunal issued on 5 May 2017. The decision upheld the finding of the 1st Respondent's Internal Disputes Resolution Committee (IDRM Committee) dated 3 May 2017. The IDRM Committee had nullified the nomination exercise for Dagoretti North Constituency held on 24 April 2017 and called for fresh nominations.
2. This Tribunal heard the Complainant's claim seeking to bar the party from nullifying the election result and praying for the issuance of the nomination certificate to the Complainant and dismissed the same in its ruling issued on 5 May 2017 and subsequent order issued on 6 May 2017. It directed that a fresh nomination exercise for Dagoretti North Constituency be carried out.

3. The present application sought to have the 1st Respondent placed in civil jail for contempt for disobedience of the said order. The application was based on the fact that the 1st Respondent was present at the ruling on 5 May at which the ruling of this Tribunal was issued directing that the IDRMM decision be complied with through a fresh nomination exercise be carried out. Since the IDRMM decision directed that the exercise be carried out within 3 days, the Applicant was apprehensive that he would be disenfranchised and be precluded from participating in the electoral process if the 1st Respondent failed to implement the said decision. Mr Wachakana for the Applicant asserted that the directives of the Tribunal ought to be obeyed to the letter and urged the Tribunal to enforce its own decisions in order to safeguard its dignity. He cited the decision of Ndolo J in *Teachers Service Commission v Kenya National Union of Teachers and 2 Others* [2013] eKLR to the effect that punishing for contempt was intended to safeguard the rule of law and asserted that the interests of justice demanded that the 1st Respondent be punished.
4. Mr Ngome for the 1st and 2nd Respondents, in addition to taking issue with the body of the application, asserted that according to the ANC constitution, the National Elections Board (NEB), and not the Secretary-General was responsible for elections. As such, the consequences of failure to comply should be visited upon NEB and not the Secretary-General. He further urged that the application be disallowed on the basis that according to section 29 of the Contempt of Court Act, one could only be held in contempt where they failed to exercise due diligence to comply.
5. Mr Agonga for the Claimant also maintained that the Secretary-General is custodian of all records of the 1st Respondent and claimed that there was determination by the party not to comply with its own rules. In relation to the

claim that the face of the applicant was defective, he directed the Tribunal to section 41 (4) of the Political Parties Act which precludes the Tribunal from giving undue regard to technicalities.

6. Whereas the Applicant had also prayed for the nomination certificate for the nomination exercise held on 24 April 2017 be issued to the Applicant, no submissions were made in this regard at the hearing of the application.

Issue for Determination

7. After careful consideration of the submissions made on the Application, we find that the only issue that arises for determination: whether the 1st Respondent's Secretary-General, ought to be held in contempt of the Tribunal's orders issued on 5 May 2017.

Analysis

8. The Tribunal has been asked to hold the 1st Respondent in contempt for failing to comply with its orders issued on May 2017. The Applicant relies on the fact that the 2nd Respondent was present in court at the reading of the subject decision of this Tribunal.
9. We agree that the orders of a Tribunal ought to be enforced, not merely in the interests of the parties but for the sake of safeguarding the rule of law. More than the dignity of the Tribunal and the parties who appear before us, the main reason why courts punish for contempt, as set out in *Teachers Service Commission v Kenya National Union of Teachers and 2 Others [2013]*, is to enhance the rule of law. We agree with the Claimant's assertion that it would set a dangerous precedent if disobedience of court orders were allowed to go unchecked.

10. However, it is also a fundamental rule of natural justice that no party ought to be condemned unheard. The Applicant asserts that the 1st and 2nd Respondents heard the decision of the Tribunal and therefore were aware of their obligation to comply. However, there is no material on record that shows that the orders of this Tribunal were ever served upon the alleged contemnor.
11. Furthermore, while the alleged contemnor might be the custodian of the 1st Respondent's records as claimed, no evidence was adduced to establish if he was personally responsible, or even capable, of enforcing the subject orders.

Orders

12. In light of the foregoing, we find that the Applicant has not shown evidence of service of the Tribunal's orders issued on 5th May 2017 upon the alleged contemnor or that the alleged contemnor was responsible for complying with the subject orders.
13. We therefore dismiss the Notice of Motion dated 9th May 2017 with no order as to costs.

DATED and DELIVERED AT NAIROBI this 10th DAY of MAY 2017

- 1. M.O. LWANGA..... (PRESIDING MEMBER)**
- 2. PAUL NGOTHO (MEMBER)**
- 3. DR. ADELAIDE MBITHI (MEMBER)**
- 4. DESMA NUNGO (MEMBER)**

