



REPUBLIC OF KENYA

THE POLITICAL PARTIES DISPUTES TRIBUNAL

COMPLAINT NO. 94 OF 2017

MARK NDUNGU NGANGA.....COMPLAINANT

-VERSUS-

MACHARIA PATRICK MWANGI.....1ST RESPONDENT

JUBILEE PARTY OF KENYA.....2ND RESPONDENT

JUDGMENT

Summary of the Complaint

[1] This Complaint concerns the Jubilee Party nomination exercise for the position of Member of County Assembly for Maringo-Hamza ward, Makadara Constituency held on 26th April 2017, where he emerged the winner. The 1st Respondent then proceeded to file an appeal with the party appeals tribunal (hereinafter referred to as IDRМ) challenging the results as announced. The Complainant in his complaint dated 5th May 2017 avers that the 1st Respondent deliberately misrepresented his appeal and on this basis, the IDRМ found in his favour.

[2] In reply, the 2nd Respondent filed a replying affidavit deposed by Stephen Ombasa, an Advocate of the High Court, on behalf of the 2nd Respondent. The 2nd Respondent argues that the Complainant has not adduced evidence to support the assertion that the 1st Respondent was involved in malpractices. The 2nd Respondent reiterates that the party’s IDRМ considered the issues and found no merit following an appeal file by the complainant. The 2nd Respondent further points out that the Complainant had altered the tallying sheet by adding 400 votes to his St Michael Polling Station tally.

[3] The 2nd Respondent contends that the outright winner for the nomination exercise is the 1st Respondent. Further, the 2nd Respondent contends that the proceedings before the

Tribunal are premature as its IDRMs were set to render its decision on 5th May 2017. The 2nd Respondent did not participate in the proceedings.

Issues for determination

[4] The main issue for determination is whether the Complainant should be the 2nd Respondent's nominee. We have perused the evidence adduced before us and note that the Form 4(ii) Declaration of Results Form adduced by both the Complainant and the 2nd Respondent are similar. It is conspicuously noted on the said form that the Complainant was declared the winner. The incidences of discrepancy and alterations noted are highly unlikely to be attributed to the Complainant. First the form is issued and signed by the 2nd Respondent's Returning Officer and secondly, the said form has not been signed by any agents. On page two of the said form, the Returning Officer has noted that the agents left immediately the results were announced. Any alterations at that stage can only have been made by or under the watch of the Returning Officer. In any event, the discrepancy noted is not so material as to affect the outcome of the final result as tallied.

[5] As regards the issue that this matter is still pending resolution before the IDRMs, the Tribunal points out that it is not an appendage of the party's IDRMs. In such matters, where timelines are strict such as disputes arising out of party primaries, the Tribunal has taken the position that all a party needs to demonstrate is the attempt and effort towards having the dispute resolved. A member of a political party should not be prejudiced over issues he has no control over. The Tribunal intervenes in such a situation and in any event, considers that evidence and pleadings before it, independent of any IDRMs adopted by the party.

Orders

We have reviewed the documents adduced by both parties and largely note that there is no great discrepancy. The Complainant has in our view discharged the evidentiary burden on a balance of probabilities. Considering the prayers sought in the Complaint dated 5th May 2017, we issue the following orders:

- a) The decision reached by the Jubilee Party National Elections Appeals Tribunal on 5th May 2017 be and is hereby set aside;
- b) The Complainant's victory as announced by the Returning Officer be upheld;

- c) The Jubilee party (2nd Respondent) is hereby ordered to present the Complainant to the IEBC as the Jubilee party candidate for the seat of Member of County Assembly for Maringo-Hamza ward in Makadara Constituency;
- d) The Jubilee Party (2nd Respondent) be and is hereby restrained from presenting the name of the 2nd Respondent to the IEBC as the Jubilee Party candidate for the seat of Member of County Assembly for Maringo-Hamza ward in Makadara Constituency;
- e) No orders as to costs.

DATED and DELIVERED AT NAIROBI this 9TH DAY of MAY 2017

- 1. M. O. Lwanga (Presiding Member)**
- 2. Desma Nungo (Member)**
- 3. Paul Ngotho (Member).....**
- 4. Dr. Adelaide Mbithi (Member)**