



REPUBLIC OF KENYA
IN THE POLITICAL PARTIES TRIBUNAL AT NAIROBI
COMPLAINT NO 179 OF 2017

MAURICE GARE OTIENO.....COMPLAINANT

VERSUS

ORANGE DEMOCRATIC MOVEMENT.....1ST RESPONDENT

HEBERT MUGANDA.....2ND RESPONDENT

JUDGMENT

Introduction

1. This judgment relates to the 1st Respondent's nominations for Member of County Assembly, Nairobi West Ward, Nairobi County on 30th April, 2017; where the Claimant herein participated. The Claimant contends while he had won the nomination his victory was overturned without due process. He therefore seeks relief from this Tribunal through his complaint dated 8th May 2017.

Claimant's Case

2. The Complainant alleges that he garnered 477 votes and was declared the winner, ahead of the 2nd Respondent who garnered 245 votes. Accordingly, he was duly issued with a nomination certificate dated 1st May, 2017.
3. However, the 1st Respondent heard and determined a complaint against him and withdrew his nomination certificate, without due notice to him. He had not been sued and was never called to the Tribunal to give his side of the story. As a result, he alleges a violation of his right to fair hearing under Article 50(1) of the

Constitution. He also avers that the 1st Respondent acted unfairly and unreasonably by declaring the 2nd Respondent as winner of the nominations.

1st Respondent's Case

4. The 1st Respondent did not file an affidavit or written submissions as directed.

2nd Respondent's Case

5. The 2nd Respondent submits that during the voting exercise, the Complainant transported voters from Mlolongo and intimidated voters using security personnel.
6. Secondly, it is submitted that the Complainant was aware of the complaint because he was served with the complaint. We, however, note that there is no evidence on record, to confirm that the Complainant was served with a hearing notice.

Analysis

7. From the evidence on record, we are satisfied that the Complainant was never informed of the proceedings before the ODM County Appeals Tribunal prior to the withdrawal of his certificate. As the Complainant properly contends, the 1st Respondent's action was a violation of his right to fair administrative action under Article 50(1) of the Constitution of Kenya. We nullify the decision as well as the resulting nomination certificate issued to the 2nd Respondent or any other candidate.
8. We have deliberately avoided making any comments on the allegations of voter transportation to avoid pre-judging any subsequent proceedings in that regard.

Relief

9. In order to conclude this matter, we make the following orders:

- (a) *A declaration be and is hereby issued to the effect that the 1st Respondent's decision to nominate, and the nomination certificate issued to, any candidate other than the Complainant herein, for position of Member of County Assembly, Nairobi West Ward, Nairobi County is null, void and of no effect in law*
- (b) *An order be and is hereby issued compelling the 1st Respondent to issue the Complainant with a nomination certificate for Member of County Assembly, Nairobi West Ward, Nairobi County, within 12 hours from pronouncement of this judgment.*
- (c) *We make no order as to costs in the interest of party unity.*

Orders accordingly.

DATED and DELIVERED at Nairobi this 12th day of May 2017

Kyalo Mbobu

Chairperson

James Atema

Member

Hassan Abdi

Member