



**REPUBLIC OF KENYA**  
**POLITICAL PARTIES DISPUTES TRIBUNAL**  
**COMPLAINT NO. 191 OF 2017 CONSOLIDATED**  
**WITH COMPLAINT NO. 235 OF 2017**

MAXWEL OCHIENG'.....COMPLAINANT

VERSUS

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

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

CONSOLIDATED WITH

GEORGE OMONDI.....COMPLAINANT

VERSUS

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

MAXWEL OCHIENG'.....2<sup>ND</sup> RESPONDENT

**JUDGMENT**

*Summary of the Case*

1. The Claimant and the 2<sup>nd</sup> Respondent in Complaint No. 191 were both contestants in the 1<sup>st</sup> Respondent's party primaries held on 30<sup>th</sup> April 2017 for the position of the Member of County Assembly, Korogocho Ward, Ruaraka Constituency, Nairobi County. The Claimant garnered 635 votes although the Returning Officer declared the Claimant to have garnered 600 votes.
2. The Claimant contested the nomination results for the said Ward citing irregularities and lodged an appeal with the 1<sup>st</sup> Respondent's County Appeals

Tribunal. The alleged irregularities included the refusal by the 2<sup>nd</sup> Respondent to allow for the transportation of ballot boxes and papers, the Returning Officer and 2<sup>nd</sup> Respondent locked themselves in a room and were later joined by the 2<sup>nd</sup> Respondent's friend to the exclusion of the Claimant, the Returning Officer upon coming out of the room announced the results and declared the 2<sup>nd</sup> Respondent the winner by garnering 619 votes contrary to the 568 votes the 2<sup>nd</sup> Respondent got.

3. Consequently, the 1<sup>st</sup> Respondent's County Appeals Tribunal made its findings and concluded that the 2<sup>nd</sup> Respondent refused to allow the transportation of ballot boxes and papers to the tallying centre at Chandaria Primary School. For these reasons, the 1<sup>st</sup> Respondent's Appeals Tribunal vide its judgment dated 6<sup>th</sup> May 2017 allowed the Claimant's appeal, revoked the 2<sup>nd</sup> Respondent's nomination certificate, upheld the Claimant's nomination and issued him with an interim certificate.
4. Despite its said judgment, the 1<sup>st</sup> Respondent went ahead and issued the 2<sup>nd</sup> Respondent with the final nomination certificate prompting the filing of the complaint herein for the following prayers:
  - a) An order restraining the 1<sup>st</sup> Respondent or its servants from submitting the name of the 2<sup>nd</sup> Respondent to the IEBC as the valid 1<sup>st</sup> Respondent's nominee for the position of the Member of County Assembly, Korogocho Ward, Ruaraka Constituency, Nairobi County.
  - b) An order declaring the Claimant as the valid 1<sup>st</sup> Respondent's nominee for the position of the Member of County Assembly, Korogocho Ward, Ruaraka Constituency, Nairobi County.
  - c) A declaration that the award of the nomination certificate to the 2<sup>nd</sup> Respondent or any other person, other than the Claimant, as the candidate for

- the position of the Member of County Assembly, Korogocho Ward, Ruaraka Constituency, Nairobi County, if any, is null and void.
- d) An order directing the 1<sup>st</sup> Respondent to issue the Claimant with the final nomination certificate as the 1<sup>st</sup> Respondent's nominee for the position of the Member of County Assembly, Korogocho Ward, Ruaraka Constituency, Nairobi County.
5. In reply, the Respondents stated that the 2<sup>nd</sup> Respondent was validly declared the winner having garnered 619 votes. The Respondents also disputed the jurisdiction of the 1<sup>st</sup> Respondent's Special County Appeals Tribunal saying it is not recognised by the 1<sup>st</sup> Respondent's rules and as such, implored this Tribunal to reject it and dismiss the Claimant's complaint forthwith.

#### *Issues for Determination*

6. The primary issue for determination is whether the 1<sup>st</sup> Respondent's nominations for the position of the Member of County Assembly, Korogocho Ward, Ruaraka Constituency, Nairobi County held on 30<sup>th</sup> April 2017 was free, fair and credible.

#### *Analysis*

7. The requirement for free and fair elections is one of the general principles undergirding Kenya's electoral processes. For an election exercise to be said to have been free and fair, the following conditions must be met, namely the electors must have voted through secret balloting, free from violence, intimidation and improper influence or corruption, conducted by an independent body, transparent and administered in an impartial, neutral, efficient, accurate and accountable manner.
8. These requirements also underlie the citizens' rights and freedoms contained in *Article 38* of the *Constitution of Kenya, 2010*, and as such, are binding on a

political party's nomination exercise. *Article 38* guarantees the right of every citizen to make political choices, which includes the rights to form and participate in the activities of a political party. In this regard, one has the right to take part in a free, fair and regular elections based on universal suffrage and the free expression of will to vie for any office of any political party to which such a person is a member.

9. To this end, *Article 91 (1) (d)* of the Constitution specifically obligates political parties in Kenya to abide by the democratic principles of good governance, promote and practice democracy through regular, fair and free elections within the party.
10. To fulfil these constitutional requirements, *section 9* of the *Political Parties Act, 2011* read together with the *Second Schedule* of the same sets out the key issues that must be contained in the constitutions of all duly registered political parties in Kenya. The relevant point for our purposes in the matter is the rule that a political party constitution must establish guidelines for, among other things, the nomination of candidates for elections.
11. The 1<sup>st</sup> Respondent's nomination rules also guarantee the rights and freedoms of their members to free, fair and credible elections. Indeed, the Claimant had legitimate reason to expect the 1<sup>st</sup> Respondent to conduct the nomination exercise for the position of the Member of County Assembly, Korogocho Ward, Ruaraka Constituency, Nairobi County in a manner that was free, fair and credible.
12. For this reason, we find that the act of locking out the Claimant from the room where the Returning Officer and 2<sup>nd</sup> Respondent locked themselves in and were later joined by the 2<sup>nd</sup> Respondent's friend rendered the process opaque, unaccountable and inaccurate. This, to us, means that it would be difficult to determine who the actual winner for the said nomination was.

13. The 1<sup>st</sup> Respondent's County Appeals Tribunal also found that the process was flawed and revoked the 2<sup>nd</sup> Respondent's nomination certificate and ordered for the issuance of the same to the Claimant. However, we have an issue with this last order of the 1<sup>st</sup> Respondent Special County Appeals Tribunal. In other words, the question is, on what basis did the 1<sup>st</sup> Respondent order the Claimant to be issued with the final nomination certificate considering that the process opaque, unaccountable and inaccurate?
14. On the question of whether the 1<sup>st</sup> Respondent's Special County Appeals Tribunal had jurisdiction to entertain the Claimant's appeal lodged before it, we have the following to say. The 1<sup>st</sup> Respondent's nomination rules establish County Appeals Tribunal and for sure do not make mention of a Special County Appeals Tribunal. Nonetheless, this Tribunal of the view that the mere use or the inclusion of the word "Special" next to the County Appeals Tribunal to make it Special County Appeals Tribunal does not deprive the said Appeals Tribunal of the jurisdiction to adjudicate any dispute filed before it provided it relates to the just concluded party primaries of the 1<sup>st</sup> Respondent. Accordingly, the Claimant was within his rights to lodge his complaint and seek for redress from the 1<sup>st</sup> Respondent's Special County Appeals Tribunal.
15. For the reasons advanced above, this Tribunal is persuaded by the Claimant's arguments that the 1<sup>st</sup> Respondent was wrong to disobey its own decision dated 6<sup>th</sup> May 2017 and was not justified to issue the 2<sup>nd</sup> Respondent with the final nomination certificate.

***Orders***

16. In the premises, this Tribunal orders as follows:

- a) That the Claimant's case be and is hereby allowed.*

- b) That the 1<sup>st</sup> Respondent be and is hereby restrained from issuing the final nomination certificate to any other person for the position of the Member of County Assembly, Korogocho Ward, Ruaraka Constituency, Nairobi County.*
- c) That, in the event that the 1<sup>st</sup> Respondent has issued the final nomination certificate to the 2<sup>nd</sup> Respondent or any another individual for the position of the Member of County Assembly, Korogocho Ward, Ruaraka Constituency, Nairobi County, the same is hereby declared null and void.*
- d) That the 1<sup>st</sup> Respondent be and is hereby ordered to conduct fresh nominations for the position of the Member of County Assembly, Korogocho Ward, Ruaraka Constituency, Nairobi County within 24 hours of this judgment.*
- e) That this judgment be and is hereby applied mutatis mutandis to Complaint Number 235 of 2017.*
- f) No orders as to cost in order to foster party unity, growth and democracy. Orders accordingly.*

DATED AT NAIROBI THIS 15<sup>TH</sup> DAY OF MAY 2017

Kyalo Mbobu .....

(Chairman)

James Atema .....

(Member)

Hassan Abdi .....

(Member)