



REPUBLIC OF KENYA
IN THE POLITICAL PARTIES DISPUTES TRIBUNAL AT NAIROBI
COMPLAINT NO. 285 OF 2017

MICHAEL OUMA MAJUA..... CLAIMANT

VERSUS

FREDRICK OSEWE BONYO.....1ST RESPONDENT

ODM NATIONAL ELECTIONS BOARD.....2ND RESPONDENT

JUDGMENT

1. The present Complaint relates to the Respondent’s nominations for Member of the County Assembly, Kariobangi North Ward, Embakasi North Constituency, Murang’a County conducted on 30 April 2017. The Claimant contested the said seat.
2. It is the Claimant’s contention that despite being declared the winner and being issued with both a provisional certificate dated 1 May 2017 and final nomination certificate dated 3 May 2017, his name was not forwarded to the Independent Electoral and Boundaries Commission (IEBC) by the party. Instead, the name of the 1st Respondent was forwarded as the proposed candidate.
3. The Claimant, being aggrieved by the decision of the party to forward the 1st Respondent’s name to the IEBC, lodged an appeal with the ODM National Appeals Tribunal on 17 May 2017. However, the said appeal was not heard since he was informed that the Tribunal was *functus officio*.

4. The Claimant approached this Tribunal on 18 May 2017 seeking to have the decision of the party reversed and his name submitted to the IEBC as the duly nominated candidate. He prayed for an order compelling the party to withdraw the 1st Respondent's name submitted to the IEBC and that the party be compelled to submit his name instead as the candidate for the said seat.
5. In support of his Claim, the Claimant supplied copies of his provisional and final nomination certificates issued by the 2nd Respondent. He also submitted a copy of the list of candidates submitted by the party to the IEBC.
6. In response, the 1st Respondent contended that he had won the said elections and was declared the winner on 1 May 2017. It was his further contention that on 3 May 2017, he was issued with a nomination certificate at the party's headquarters dated the same day.
7. Further, the 1st Respondent asserted that the outcome of the exercise, as indicated in the provisional nomination certificate issued to him, was that he had garnered 997 votes, against the Claimant's 990 votes indicated in his provisional certificate, and as such, he was the duly nominated candidate.
8. He also asserted that the Claimant had failed to promptly approach the internal dispute resolution mechanism for resolution of his dispute, and urged that the Complaint be dismissed for being actuated by bad faith.
9. In his submissions, the Claimant contended that the 1st Respondent's advocate was not authorised to practise and asked that the pleadings be struck off the record. The details provided by the Claimant to support this allegation referred to one Mr Gideon J Ogude and not Munyasya and Company Advocates which is the law firm on record for the Respondent. It was noted from the records that the alleged advocate merely held brief at one of the sittings. This concern therefore does not merit further address at this point.

10. The manner in which the nomination exercise in respect of Kariobangi North Ward, Embakasi North Constituency was carried out is not being called into question. As to the issue of IDRM the Claimant contends that the same did not progress because the Tribunal, which was the party organ tasked with executing that mandate was *functus officio* by the time the cause of action arose. PPDT has often held that in order to be seized of jurisdiction, attempt must have been made at resolving the matter internally. This is the case in this instant.

Issues for Determination

11. From the record, the main issue for determination is who between the Claimant and the 1st Respondent should be declared the duly nominated candidate for Member of the County Assembly, Kariobangi North Ward, Embakasi North Constituency.

Analysis

12. While both the Claimant and the 1st Respondent are in possession of provisional and final certificates dated and issued on the same day and purportedly issued by the same Returning Officer, one Mr Swara Okwangla, it is noteworthy that the signatures on the documents are dissimilar. Moreover, while the certificate issued to the Claimant indicates that Mr Swara Okwangla prepared it as the Returning Officer of Embakasi North Constituency, the certificate issued to the 1st Respondent indicates that Mr Okwangla is the Returning Officer of Kariobangi North, which is the ward in question. Since results are declared by the Returning Officer at the constituency level, and a certificate issued, it is peculiar that the certificate issued to the 1st Respondent would refer to Mr Okwangla as the Returning Officer of Kariobangi North. In the circumstances the 1st Respondent's provisional certificate is questionable.

13. Unfortunately, the party did not appear before the Tribunal to clarify the situation. We did not have the opportunity to hear from the party on the matter and in particular from the Returning Officer, the said Mr Swara whose documents are in issue. We are therefore unable to establish which documents are authentic.
14. Since the matter was never the subject of IDR, the party never had the opportunity to adjudicate over the dispute. As we have stated many a time, the Tribunal is not an extension of party dispute resolution but rather is an independent body that must be accorded all information that would assist in making such independent analysis of the fairness of the process.
15. The Claimant could have sought supportive affidavits from the party officials who oversaw the process. We note that this is not the case, despite the Claimant being aware that both he and the 1st Respondent held party nominations documents.

Orders

16. In light of the foregoing, the Claimant has not satisfied the Tribunal that he merits the prayer sought. The Claim therefore fails with no order as to costs.

Dated at NAIROBI this 25TH DAY of MAY 2017

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

4. Dr. Adelaide Mbithi(Member)