



REPUBLIC OF KENYA
IN THE POLITICAL PARTIES TRIBUNAL AT NAIROBI
COMPLAINT NO. 80 OF 2017

IN THE MATTER OF A DISPUTE BETWEEN

NICHOLAS ZANI.....CLAIMANT

VERSUS

ISSA BOY.....1ST RESPONDENT

ORANGE DEMOCRATIC MOVEMENT (ODM).....2ND RESPONDENT

JUDGMENT

1. The Complainant was an aspirant for the position of Senator Kwale County. The complainant raises several issues relating to the candidacy of the 1st Respondent in the nomination exercise and the conduct of the exercise. Regarding the candidacy of the 1st Respondent, the Complainant avers that the 1st Respondent submitted his candidacy outside the time period provided under the Rules of the 2nd Respondent's and that he did not pay the mandatory fee required by the 2nd Respondent's Rules required for senatorial aspirants. The Complainant also avers that the 1st Respondent was the instigator behind the irregularities that occurred during the nomination process. These includes allegations of voter bribery and violence. 1st Respondent was declared winner of this flawed process.
2. The complainant avers that he appealed to the National Appeals Tribunal (NAT), hereafter IDR, which dismissed the matter. The complainant has applied for review of the decision to the 2nd Respondent's IDR. The complainant now seeks declaratory orders to disqualify the 1st Respondent from

the senatorial race and that the claimant be issued with the Certificate of Nomination.

Preliminary Objection

3. The 1st Respondent has filed a preliminary objection on the main grounds that;
 - a) **The honourable Tribunal is not seized of jurisdiction to determine and grant orders sought by claimant.**
 - b) **The claims sought can only be and have been internally dealt with by the 2nd Respondent's NAT.**
 - c) **The suit is an abuse of the process and the claim is misconceived misdirected and misled.**

Other than the Preliminary Objection, the 1st Respondent never filed any other document. The 2nd Respondent was served but neither entered appearance nor participated in the proceedings before the Tribunal. Counsel for the Claimant and the 1st Respondent argued the preliminary objection.

Consideration

4. On jurisdiction, Section 40(2) of the Political Parties Act requires parties to first resort to **IDRM** before the Tribunal is seized of jurisdiction. The Tribunal has taken an accommodating position in defining **IDRM** as is evident from its decisions made over time. All a party needs to show is that there was an attempt at **IDRM** regardless of the status of the process. We have perused the complaint and the documents availed by the complainant and note that there exist two letters relevant to determining the jurisdiction question. The first letter is dated 25th April 2017 and is in the nature of an appeal to **NAB** for disqualification of the 2nd Respondent. The second letter is undated but is in reference to review of an appeal that was dismissed. It appears that the review is ongoing with no indication on when it is likely to be concluded in the circumstances. The Tribunal finds that it has the requisite jurisdiction over the complaint.
5. The Preliminary Objection having failed, we now proceed to determine the substance of the claim.

Issues

6. Having disposed of the Preliminary Objection, the issue for our consideration is whether or not the claimant can be issued with the Certificate of Nomination.

Analysis

7. We note that the Respondents did not file any documents save for the preliminary objection by the 1st Respondent already considered above. This notwithstanding the legal burden of proof remains with the Claimant. The Claimant filed a supplementary affidavit on 6th May 2017 in which he annexed a copy of the nomination certificate issued to him.
8. It is unclear under what circumstances the claimant was issued with the certificate of nomination. The Claimant has made averments in paragraphs 7 and 8 of his claim that the nomination process was irregular and totally unable to produce a nominee. The claimant cannot on one hand claim that the nomination process was marred by irregularities whilst also seek to be issued with a certificate arising from such process.
9. At this juncture, the PPDT must again emphasize to point out that our jurisdiction is independent of the IDRМ. This Tribunal is not mandated to exercise appellate or review jurisdiction over **IDRМ** while address the dispute independently but bearing in mind the **IDRМ** process.

Reliefs

10. We have considered the reliefs sought by the claimant in light of our jurisdiction. The claimant having failed to persuade us on the only issue for our determination, we are constrained to dismiss the same but with no order as to costs.

DATED, SIGNED and DELIVERED at NAIROBI this 10th day of May 2017.

Milly Lwanga OdongoPresiding Member

Paul NgothoMember

Dr. Adelaide MbithiMember