



REPUBLIC OF KENYA
IN THE POLITICAL PARTIES DISPUTES TRIBUNAL AT NAIROBI
COMPLAINTS NOS. 122, 123, 128 & 129 OF 2017
(AS CONSOLIDATED)

NYANGWESO ALFRED AKUNGA.....1ST COMPLAINANT
MARY KEMUNTO RATEMO.....2ND COMPLAINANT
KENNEDY NYANKIEYA NYAMWEYA.....3RD COMPLAINANT
ALFRED NDEMO ONGERA.....4TH COMPLAINANT
IBRAHIM ATUTI NDEMO.....5TH COMPLAINANT

VERSUS

JUBILEE PARTY OF KENYA..... RESPONDENT

AND

CHRISTOPHER MOGERE OBURE.....1ST INTERESTED PARTY
ZEBEDEO JOHN OPORE.....2ND INTERESTED PARTY
SIMON OGARI.....3RD INTERESTED PARTY
JIMMY NURU ONDIEKI ANGWENYI.....4TH INTERESTED PARTY

JUDGMENT

Background

1. The 1st Complainant is the Complainant in Complaint No. 129 of 2017. This complaint is filed against the Respondent with the 1st Interested Party likely to be affected directly in the outcome. It relates to the position of Governor, Kisii County.

2. The 2nd Complainant is the Complainant in complaint No. 128 of 2017. This complaint is filed against the Respondent and with the 3rd Interested Party likely to be directly affected in the complaint. It relates to the position of Member of National Assembly, Bonchari Constituency.
3. The 3rd Complainant is the Complainant in Complaint No. 123 of 2017. This complaint is filed against the Respondent with the 3rd Interested Party likely to be affected directly in the complaint. It relates to the position of Member of National Assembly, Bomachoge Chache Constituency.
4. The 4th & 5th Complainants are the complainants in Complaint No. 122 of 2017. The Complaint is filed against the Respondent and the 4th Interested Party is likely to be affected by the outcome. The Complaint relates to the position of Member of National Assembly, Kitutu Chache North Constituency.
5. When the complaints first came before the Tribunal for hearing, Dr. Khaminwa Senior Counsel acting on behalf of all the complainants raised substantially the same complaints. With the concurrence of the Advocates for the Respondent and the Interested Parties, the Tribunal consolidated the complaints and directed that they be heard and determined together. The Interested Parties are incumbents for their respective positions.

Summary of the complaint

6. The Complaints raise substantially the same issues. All the complainants expressed their interest to participate in nomination exercises for their respective positions of interest. They submitted applications and paid nomination fees. Nomination exercises were slated on 26th April, 2017. However, the nomination exercise did not happen as no ballot papers were availed for the purpose in at least 32 stations. The

complainants filed complaints with the Respondents on 30th April, 2017 (IDRM) and the Respondents are yet to deliver their rulings on those complaints. Meanwhile, the Respondent is accused of giving direct nomination to the Interested Parties who are the incumbents for their positions respectively.

7. The Complainants submit that direct nomination by the Party is unacceptable and unconstitutional likely to take us back to the dark days. To buttress this argument, the complainants refer us to **Complaint No. 53 of 2017 – Yakub Salah-vs-KANU, Article 38(2)(b) of the Constitution, Article 11 of the Jubilee Constitution, Section 6(c) of the 1st Schedule to the Political Parties Act and Article 91(c) of the Constitution.** The complainants thus request this Tribunal to intervene and order the Respondent to carry out nominations competitively and allow the complainants the right to participate in the primaries.

The Response

8. The Respondent does not dispute that there were no nomination exercises. It however submits that it has the prerogative to resort to direct nomination under **Rules 5 and 13.11** of the Respondent's Nomination Rules. The Respondent takes the position that the complainant submitted themselves to the provisions of the Respondent's Constitution and Nomination Rules. The Respondent insists that its actions are legal and the Tribunal should not be used to re-write the contracts which are already binding up the complainants as members of the Respondent. The Respondent relied on the High Court decision in **Eunice Auma Onyango vs Salin Akinyi Oluoch [2015] eKLR.**

Issues for determination

9. The main issue for determination is whether the Respondent should be compelled to carry out fresh, free and fair nominations.

Analysis

10. We have perused the provisions of Rules 5 of the Respondent's Nomination Rules which entitles the party to conduct party nominations. This may be so but the party nominations need to be conducted transparently. The Respondent was expected to disseminate this information in good time in the wake of the Complainants having expressed their interest in participating in party nominations. The Respondent advertised that nominations were expected to be conducted on 26/04/2017 and there has been no explanation offered as to why this did not happen. **Article 11** of the Respondent's Constitution obligates the party to ensure a free, fair and transparent process in the nomination exercise. This is the import of **Article 47(2)** of the Constitution and **Section 4 of Fair Administrative Act**. There is no evidence that this was complied with by the Respondent.
11. As we held in **PPDT No. 53 of 2017 Yakub Sarah vs KANU National Elections Board & 2 others**, the Complainants having been cleared by the Respondent had a legitimate expectation that the Respondent would conduct party primaries when they would be allowed to compete. Political parties are expected to uphold and promote democratic processes amongst its processes.
12. The Respondent also raised an issue on our jurisdiction arguing that the Complainants approached this Tribunal prematurely. There is indication that the Complainants had instituted IDRM processes being Appeal Nos. 60 of 2017, 219 of 2017 and 371 of 2017, all of which were pending rulings before the Respondent's Appeals Tribunal. The Tribunal is satisfied that the Complainant's attempted IDRM

and decisions were pending before the Respondents Appeal Tribunal. We have taken the position that where a member of a political party invokes IDR, he is no longer in control to the Political Party machinations in so far as the determination of the dispute is concerned. For disputes relating to party primaries which have strict timelines set by IEBC, it is impractical to await the conclusion of IDR process before the Tribunal is seized of the complaint. Accordingly, we find that we have the requisite jurisdiction.

Orders

13. We partially allow the complaints in Nos.122, 123, 128 and 129 of 2017 as consolidated and make the following orders:-
 - a) **A declaration be and is hereby issued to the effect that the Respondent failed to conduct free and fair nominations for the following positions; Governor Kisii County, Member of Parliament Kitutu Chache North Constituency, Member of Parliament Bomachoge Chache North Constituency and Member of Parliament Bonchari Constituency.**
 - b) **A declaration be and is hereby issued to the effect that the purported direct nomination and issuance of certificate of nomination issued by the Respondent in respect of Governor Kisii County Member of Parliament, Kitutu Chache North Constituency, Member of Parliament Bomachoge Chache constituency and Member of Parliament Boncheri Constituency is null and void and of no effect.**
 - c) **The Respondent is hereby compelled to forthwith carry out a fresh, free and fair nomination for the above positions in Kisii County in**

accordance with the Party Constitution and Rules whilst taking into account the interests of all the Complainants.

- d) Notification of this decision be sent to IEBC.
- e) Each party to bear its own costs.

DATED IN NAIROBI THIS 10TH DAY OF MAY, 2017.

- 1. M. O. LWANGA (PRESIDING MEMBER).....
- 2. DESMA NUNGO (MEMBER).....
- 3. PAUL NGOTHO (MEMBER).....
- 4. DR. ADELAIDE MBITHI (MEMBER).....