



THE REPUBLIC OF KENYA  
IN THE POLITICAL PARTIES DISPUTES TRIBUNAL AT NAIROBI  
COMPLAINT NO. 300 OF 2017

---

OSEBE NYONGESA DENNIS.....CLAIMANT  
VERSUS  
AMANI NATIONAL CONGRESS PARTY.....1<sup>ST</sup> RESPONDENT  
WALTER OWADE MUMBIA.....2<sup>ND</sup> RESPONDENT

**JUDGMENT**

*Background*

1. The present judgment relates to the 1<sup>st</sup> Respondent’s nominations for Member of the County Assembly, Matayos South Ward, Busia County, held on 18 April 2017. Both the Claimant and the 2<sup>nd</sup> Respondent were contestants in the said nomination exercise.
2. It is the Claimant’s contention that he was declared the winner of the said nomination exercise and that on 1 May 2017 he received a text message from the 1<sup>st</sup> Respondent’s Secretary-General inviting him to pick his nomination certificate from the 1<sup>st</sup> Respondent’s offices between 6 and 8 May 2017. However, on 8 May 2017, the name of the 2<sup>nd</sup> Respondent was read out as the nominee for the said electoral seat, amid protests by the Claimant and other party officials.
3. It is the Claimant’s contention that the 1<sup>st</sup> Respondent undertook to correct the error and award a certificate to the Appellant. However, while the Claimant was awaiting issuance of the said certificate, the 2<sup>nd</sup> Respondent was issued with the same. This was despite there being no setting aside of the declaration of the

Claimant as the nominee and there being no nomination dispute contesting his win.

4. The Claimant contended that he could not have filed a dispute sooner because at all material times, he was the winner of the said nomination exercise and he had a legitimate expectation that the party would act in accordance with its constitution, the nomination rules and the rules of natural justice.
5. The Claimant further alleged that on 19 May 2017, he learnt that the 2<sup>nd</sup> Respondent's name had been forwarded to the IEBC. On 22 May 2017, the Claimant prepared a Memorandum of Complaint, which he delivered to the 1<sup>st</sup> Respondent's National Appeals Tribunal. However, the Claimant contends that an employee of the 1<sup>st</sup> Respondent declined to accept service and as a result, the same was never heard either by the National Appeals Tribunal or the National Elections Board of the 1<sup>st</sup> Respondent. The Claimant therefore contended that he had been deprived of an opportunity to challenge the issuance of the nomination certificate to the 2<sup>nd</sup> Respondent in direct contravention of the principle of universal suffrage.
6. The Claimant therefore prayed for a declaration that the failure to hear his complaint was illegal and contrary to natural justice, a declaration that the 1<sup>st</sup> Respondent's failure to submit his name to the IEBC was irregular and illegal, a declaration setting aside the submission of the 2<sup>nd</sup> Respondent's name, an order directed at the 1<sup>st</sup> Respondent to remove the 2<sup>nd</sup> Respondent's name from the list submitted to the IEBC and an order directing the IEBC to accept the Claimant's name as the 1<sup>st</sup> Respondent's nominee for Member of the County Assembly, Matayos South Ward, Busia County.
7. In support of his application, the Complainant/Claimant adduced several letters to the 1<sup>st</sup> Respondent complaining of irregularities in respect of the nomination

exercise, his appeals to the party dated 20 and 22 May 2017, a summary of results for the said ward and an excerpt of the 1<sup>st</sup> Respondent's aspirants list showing the 2<sup>nd</sup> Respondent's name.

8. The 1<sup>st</sup> Respondent, through its Secretary-General, controverted the assertion by the Complainant that he had won the said nominations and asserted that the documents relied on by the Claimant were not attributable to the party.
9. It was further asserted on behalf of the 1<sup>st</sup> Respondent that its Executive Director had written to the Claimant in response to his letter dated 22 April 2017, advising him to file a complaint upon payment of the requisite fees
10. It was the 1<sup>st</sup> Respondent's position that the person duly nominated and gazetted was the 2<sup>nd</sup> Respondent and therefore the Tribunal did not have jurisdiction in respect of the present dispute seeing as the 2<sup>nd</sup> Respondent had already been gazetted as the duly nominated candidate.
11. There was no appearance for the 2<sup>nd</sup> Respondent despite service.

### *Issue for Determination*

- a. **Whether this Tribunal has jurisdiction to determine the present dispute.**
- b. **Whether the Claimant was the duly nominated candidate for Matayos South Ward.**

### *Analysis*

- c. **Whether this Tribunal has jurisdiction to determine the present dispute**
12. The 1<sup>st</sup> Respondent contends that the Tribunal has no jurisdiction in respect of the present dispute on the basis that the 2<sup>nd</sup> Respondent's name was gazetted as the

nominee for the said seat. Since jurisdiction goes to the root of the competence of this Tribunal to determine the matter, we will address it as a preliminary issue.

13. The jurisdiction of this Tribunal is established by section 40 of the Political Parties Act. Section 40 (1) lists the categories of disputes which may be arbitrated by the Tribunal. These include disputes between a party member and a political party, and disputes arising from party primaries. However, this jurisdiction is fettered where, contrary to section 40 (2), a party member does not attempt to resolve the dispute using the party's internal dispute resolution mechanism (IDRM). The Claimant, via letters dated 20 and 22 May 2017 has demonstrated that he attempted to resolve the matter at the party level. When this matter was mentioned on 31 May 2017, it was contended on behalf of the 1<sup>st</sup> Respondent that there was in fact an IDRM decision dated 6 May 2017. However, the same was not adduced before the Tribunal.

14. Moreover, while the 1<sup>st</sup> Respondent contends that the Tribunal is divested of jurisdiction on the basis that the 2<sup>nd</sup> Respondent has already been gazetted, no gazette notice was adduced in support of this fact. Since it is trite law that he who alleges must prove, the 1<sup>st</sup> Respondent failed to prove that the matter is removed from the jurisdiction of the Tribunal. The Tribunal therefore finds that it is well seized of this matter.

**b. Whether the Claimant was the duly nominated candidate for Matayos South Ward**

15. The Claimant contends that he won the nomination exercise conducted on 18 April 2017. In support of his assertions, he attached a summary of results at pages 16-25 of his memorandum and grounds of appeal and a report signed by the Returning Officer Benard Maloba Khabamba indicating that there was no

voting in two polling stations due to disruption of the exercise by the 2<sup>nd</sup> Respondent. The Report confirmed the win by the Claimant.

16. The 1<sup>st</sup> Respondent took issue with both the report and the results on the basis that they do not contain the party logo and they are not signed by the candidates or their agents as required by rules 6.21-6.26 of the party nomination rules.

17. A perusal of the results supplied by the Claimant in support of his win indicates that the results do not appear in the format prescribed by the party rules. They are neither signed by their maker, nor the candidates or their agents in their stead. As asserted by the 1<sup>st</sup> Respondent, they can therefore not be relied on as official results. While the Returning Officer wrote a report, no explanation was proffered for why he did not adduce official results in support of his assertion that the Claimant won. Moreover, the Claimant did not adduce evidence of the notification via text message from the 1<sup>st</sup> Respondent directing him to collect his nomination certificate on 8 April 2017. Since this is an electoral dispute, involving not just the parties before the Tribunal but also an electorate whose choice of representative is at stake, it behoves the Claimant to produce clear, cogent, consistent evidence in support of his assertions.

18. We therefore find, on a balance of probabilities, that the Claimant has not satisfied this Tribunal that he was the duly nominated candidate for Member of the County Assembly, Matayos South Ward.

### **ORDERS**

19. In light of the foregoing, we make the following orders:

- a. The Claimant Memorandum dated 23 May 2017 therefore fail and is hereby dismissed.*
- b. That each party will bear its own costs.*

**Dated at NAIROBI this 8<sup>th</sup> DAY of JUNE 2017**

- 1. Kyalo Mbobu (Chairperson) .....**
- 2. Paul Ngotho (Member).....**
- 3. Desma Nungo (Member).....**