



**REPUBLIC OF KENYA**  
**POLITICAL PARTIES DISPUTES TRIBUNAL**  
**COMPLAINT NO. 253 OF 2017**

PAMELA AWUOR OYOO.....CLAIMANT

VERSUS

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

VICTOR RODGERS OCHIENG'.....2<sup>ND</sup> RESPONDENT

**JUDGMENT**

*Summary of the Case*

1. The Claimant and the 2<sup>nd</sup> Respondent were contestants in the 1<sup>st</sup> Respondent's party primaries held on 25<sup>th</sup> April 2017 for the position of the Member of County Assembly for Migosi Ward, Kisumu County and was announced the winner and even issued with the provisional nomination certificate and a final one as well. However, on 10<sup>th</sup> May 2017, the Claimant claimed that she learnt that the 2<sup>nd</sup> Respondent had also been issued with the final nomination.
2. The Claimant further averred that her attempts to lodge a complaint with 1<sup>st</sup> Respondent bore no fruit she could not reach it. The Claimant approached this Tribunal for the following reliefs:
  - a) An order barring the 1<sup>st</sup> Respondent from submitting the 2<sup>nd</sup> Respondent's name as the nominee in respect of Migosi County Assembly Ward.
  - b) An order directing the 1<sup>st</sup> Respondent to submit the name of the Claimant to the IEBC as the nominee in respect of Migosi County Assembly Ward.

- c) An order barring IEBC from accepting any other name as the nominee in respect of Migosi County Assembly Ward.
3. Come the 13<sup>th</sup> May 2017 when this matter was placed before the Tribunal, the Tribunal ordered the Claimant to serve the Respondents. The service of summons was effected by one Mark Okinda. However, neither the Respondents filed their responses leaving this Tribunal without any option except to proceed and determine this case.

*Issues for Determination*

4. The main issue for determination in this case is whether the 1<sup>st</sup> Respondent was justified in issuing the final nomination certificate having issued the same to the Claimant.

*Analysis*

5. This issue calls into the question the credibility of the 1<sup>st</sup> Respondent's nomination process to determine the nominee for the position of the Member of County Assembly, Migosi Ward, Kisumu County. 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.
6. 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.

7. 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.
8. 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.
9. The 1<sup>st</sup> Respondent's nomination rules also guarantee the rights and freedoms of their members to a free, fair and credible elections. Indeed, it is in doubt that 1<sup>st</sup> Respondent conducted party primaries on 25<sup>th</sup> April 2017 with the goal to determine the nominee for the County Assembly Member, Migosi Ward, Kisumu County.
10. As a political party that is duly registered in Kenya, the 1<sup>st</sup> Respondent owes to its members the obligation to conduct a free, fair and credible nomination process. This meant, among other things, that the exercise ought to have been credible and accurate results of the same recorded by the Returning Officer.
11. Upon the perusal of the evidence before us, we noted that both the Claimant and the 2<sup>nd</sup> Respondent were issued with the final nomination certificate as nominee for the County Assembly Member, Migosi Ward although it was only the Claimant who was issued with the provisional nomination certificate. However, neither the 1<sup>st</sup> nor the 2<sup>nd</sup> Respondent filed their responses to rebut the Claimant's averments. In other words, the complaint was not opposed by either of the Respondents. Consequently, in the absence of any evidence to the contrary, justice in the circumstances demands that this Tribunal holds in favour of the Claimant, which we hereby do.

**Orders**

12. *Based on the above analysis, 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 submitting the 2<sup>nd</sup> Respondent's name as the nominee in respect of Migosi County Assembly Ward, Kisumu 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 individual other than the Claimant for the position of the Member of County Assembly, Migosi Ward, Kisumu County the same is hereby declared null and void.*
  - d) That the 1<sup>st</sup> Respondent be and is hereby ordered to submit the name of the Claimant to the IEBC as the nominee in respect of Migosi Ward, Kisumu County.*
  - e) That the 1<sup>st</sup> Respondent be and is hereby ordered to bear the costs of this suit.*
- Orders accordingly.*

**DATED AT NAIROBI THIS 18TH DAY OF MAY 2017**

1. Kyalo Mbobu .....

**Chairman**

2. James Atema .....

**Member**

3. Hassan Abdi .....

**Member**