



REPUBLIC OF KENYA
IN THE POLITICAL PARTIES DISPUTES TRIBUNAL
COMPLAINT NO. 214 OF 2017

PAUL OTIENO OBIA.....CLAIMANT

-VERSUS-

ORANGE DEMOCRATIC MOVEMENT.....1ST RESPONDENT

LUMUMBA PATRICK OWADE.....2ND RESPONDENT

JUDGMENT

Summary of the Complaint

1. This complaint relates to the 1st Respondent’s party primaries held for the position of Member of County Assembly, Woodley Ward. The Complainant avers that he won having garnered 1156 votes. The 2nd Respondent lodged a complaint with the County Appeals Tribunal (**CAT**) challenging the Complainant’s nomination. **CAT** in its decision acted 6th May 2017 revoked the nomination of the Complainant and awarded it to the 2nd Respondent.
2. The claimant was dissatisfied with this decision and sought review. Upon review, **CAT** in its decision of 8th May 2017 reversed its earlier decision, noting the Tribunal noted that the claimant had not been accorded an opportunity to respond to the application by the 2nd Respondent. The claimant had already been issued with the Provisional nomination certificate. The Claimant now seeks to implement the decision of **CAT** dated 8th May 2017 the effect of which is to be awarded the nomination certificate. We have considered the Claimant’s Supporting Affidavit and the written submission all filed on 10th May 2017.

3. The 1st Respondent did not appear or participate in the proceedings. An affidavit of service was filed on 10th May 2017 by one Nicholas Koskey, a process server.
4. The 2nd Respondent appeared through counsel.

Issues for determination

5. The only issue for determination is whether or not the Claimant is entitled to be 1st Respondent's nominee for the position of Member of County Assembly, Woodley Ward in the upcoming general elections.

Analysis

6. The Claimant bears the burden of proof of his case. We have considered the evidence adduced. The Claimant has adduced the Provisional Certificate issued to him and the decision of CAT on 8th May 2017. He has also adduced the tallied results that buttress his assertion that he garnered 1,156 votes becoming the winner. This evidence has not been rebutted and we see no reason to disbelieve the information. The 2nd Respondent's case as analyzed before CAT related largely to Nomination malpractices, which were not proved. Therefore, this Tribunal finds that the Claimant is entitled to be the 1st Respondent's nominee to the subject position.

Orders

7. Accordingly, this Tribunal hereby upholds the Special County Appeals Tribunal's Decision of 8th May 2017 and orders that:-
 - a) **The 1st Respondent shall forthwith issue the final Nomination Certificate for the Position of Member of County Assembly, Woodley Ward, Kibra Constituency, Nairobi County to the Claimant to the Claimant within 2 days.**
 - b) **No Order as to costs.**

DATED and DELIVERED AT NAIROBI this 10TH DAY of MAY 2017.

1. M. O. Lwanga (Presiding Member)

2. Paul Ngotho (Member)

3. Dr. Adelaide Mbithi (Member)

4. Desma Nungo (Member)