



REPUBLIC OF KENYA
IN THE POLITICAL PARTIES DISPUTES TRIBUNAL AT NAIROBI
COMPLAINT NO. 203 OF 2017

ROBERT ORUKO OTEGE.....APPLICANT/COMPLAINANT

-VERSUS-

ORANGE DEMOCRATIC MOVEMENT1ST RESPONDENT

ODM NATIONAL ELECTIONS BOARD.....2ND RESPONDENT

INDEPENDENT ELECTORAL BOUNDARIES

COMMISSION.....3RD RESPONDENT

STEPHEN OUMA OWITI.....INTERESTED PARTY

RULING

Summary of the Application

1. The Notice of Motion application dated 5th June 2017 seeks to institute contempt proceedings against the 1st Respondent for acting contrary to the provisions of the law and the judgment of this Tribunal dated 16th May 2017.
2. The orders of the Tribunal dated 16th May 2017 restrain the 1st Respondent from issuing the final nomination certificate to any person for the position of Member of County Assembly, Kolwa East Ward and further direct the 1st Respondent to conduct fresh nominations for the position in issue.
3. It is the Complainant's contention that in violation of the said orders, the 1st Respondent proceeded to issue the final nomination certificate to the interested party in this matter before conducting a fresh nomination exercise and has failed to withdraw the same. Based on the foregoing, it is the Complainant's contention that the 1st Respondent is in contempt of the Tribunal's orders.

Interested Party's submission

4. In reply, the interested party vide a Replying Affidavit dated 8th June 2017, avers that the 1st Respondent complied with the Tribunal's orders dated 16th May 2017 and conducted a fresh nomination exercise which led to his nomination as the 1st Respondent's nominee for the position in issue. He further avers that he presented his nomination papers to Independent Electoral and Boundaries Commission (IEBC) and was subsequently cleared by the same.
5. It is also the Interested Party's contention that the same dispute has been raised before the IEBC Committee in **Complaint No. 177 of 2017, which** sat on 8th June 2017 and subsequently dismissed the same. He further argues that the matter herein is *res judicata* as it has been adjudicated before a different forum with concurrent jurisdiction.
6. The interested party relied on pleadings submitted in **Complaint No. 177 of 2017** before IEBC, his nomination certificate from the 1st Respondent dated 18th May 2017 and the list of the 1st Respondent's duly nominated candidates as submitted to IEBC.

Issues for determination

7. The following issues emerge for determination:
 - a. **Whether the Tribunal has jurisdiction in this application;**
 - b. **Whether the 1st Respondent is in violation of the Tribunal's orders dated 16th May 2017.**

Analysis

8. Jurisdiction is everything and once raised it must be determined from the onset and if successful, the Tribunal must down its tools. From the record before us, this Tribunal notes that the Interested Party submitted his nomination papers to IEBC and was cleared by the same. Article 88 (4)(e) of the Constitution provides that the IEBC's mandate extends to-

'the settlement of electoral disputes, including disputes relating to or arising from nominations but excluding election petitions and disputes subsequent to the declaration of elections results'.
9. It is clear that once the Interested Party was cleared by the IEBC, jurisdiction over the present dispute passed over to the IEBC as stipulated under Article 88(4) (e) of the Constitution. It is therefore the view of this Tribunal that it is devoid of jurisdiction in the application before it.

10. In any event, we have perused the application before us to determine if the Complainant has submitted a *prima facie* case that the 1st Respondent is in violation of the Tribunal's orders.
11. From the record before us, we note that the 1st Respondent conducted a fresh nomination exercise and a nomination certificate was issued to the Interested Party dated 18th May 2017, following which his name was forwarded to IEBC. Based on the foregoing, it is the view of this Tribunal that the 1st Respondent is in compliance with the Tribunal's orders and therefore the contempt application fails.

Orders

12. This Tribunal having found as above is therefore unable to grant the prayers sought by the Notice of Motion application dated 5th June 2017 and the same is dismissed with no orders as to costs.

DATED at NAIROBI this 25TH DAY of MAY 2017

- 1. M.O. Lwanga (Presiding Member)**
- 2. Desma Nungo (Member)**
- 3. Paul Ngotho (Member)**
- 4. Dr. Adelaide Mbithi (Member)**