



**REPUBLIC OF KENYA**  
**IN THE POLITICAL PARTIES DISPUTES TRIBUNAL**  
**COMPLAINT NO. 204 OF 2017**

ROY OCHIENG SAMO.....COMPLAINANT

VERSUS

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

ODM NATIONAL ELECTION BOARD.....2<sup>ND</sup> RESPONDENT

IEBC.....3<sup>RD</sup> RESPONDENT

CLIFFORD ODHIAMBO MWALO.....INTERESTED PARTY

**JUDGMENT**

**Summary of the Case**

1. The Claimant was a contestant 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, Kajulu Ward, Kisumu East Constituency, Kisumu County. The Claimant was declared the winner for the said nominations having garnered 2,174 votes against the Interested Party who got 1,354, and was consequently issued with a provisional nomination certificate to that effect.
2. However, to date, the Claimant has not been issued with the final nomination certificate as required by *rule 18.8 (iv)* of the 1<sup>st</sup> Respondent’s *Elections and Nomination Rules*. The said *rule 18.8 (iv)* demands that a winner of a party primary exercise must be issued with the final nomination certificate within 7 days of the date of conclusion of the party primary in question.

3. The Claimant further explained that his victory was not challenged by anybody before the 1<sup>st</sup> Respondent's County Appeals Tribunal although the Claimant later learnt that 1<sup>st</sup> Respondent had issued the Interested Party herein with the final nomination certificate. This meant that there being no dispute against the Claimant, the Claimant should have been the one to be issued with the final nomination certificate; not the Interested Party.
4. The Claimant's attempts to bring the same to the attention of the 2<sup>nd</sup> Respondent have not borne any fruits to date. He has now come to this Tribunal for the following reliefs:
  - a) A declaration that the Claimant is the bone fide 1<sup>st</sup> Respondent's nominee for the position of the Member of County Assembly, Kajulu Ward, Kisumu East Constituency, Kisumu County.
  - b) A declaration that the award of the nomination certificate to the Interested Party or any other person, other than the Claimant, as the candidate for the position of the Member of County Assembly, Kajulu Ward, Kisumu East Constituency, Kisumu County, if any, is null and void.
  - c) An order restraining the 1<sup>st</sup> and 2<sup>nd</sup> Respondents from presenting the name of the Interested Party to the 3<sup>rd</sup> Respondent as the duly nominated Member of County Assembly, Kajulu Ward, Kisumu East Constituency, Kisumu County.
  - d) An order compelling the Interested Party to issue the Claimant with the final nomination certificate for the position of the Member of County Assembly, Kajulu Ward, Kisumu East Constituency, Kisumu County.
5. In response, the Interested Party opposed the Claimant's assertions terming them as being baseless and without justification considering that the Claimant did not file his complaint with the 1<sup>st</sup> Respondent's Special County Appeals Tribunal. He has prayed for the dismissal of the Claimant's case forthwith.

**Issues for Determination**

6. The primary issue is whether the 1<sup>st</sup> and 2<sup>nd</sup> Respondents were justified in denying the Claimant final nomination certificate and instead issuing the same to the Interested Party herein.

**Analysis**

7. The whole issue in this matter turns on the provisions of *Article 38* of the *Constitution of Kenya, 2010*, which 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.
8. 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.
9. 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.

10. The 1<sup>st</sup> Respondent's nomination procedures in *rule 18.8 (iv)* demands that a winner of a party primary exercise ought to be issued with the final nomination certificate within 7 days of the date of conclusion of the party primary in question in the absence of a complaint against a nominee. The rule stipulates, *"Upon receipt of the certified copy of the certificate of return from the County Elections Appeal Board and where no appeal has been lodged at the National Elections Appeals Tribunal, the NEB shall proceed to process and issue the nomination certificate to the declared winner within seven (7) days of the primaries or determination of a dispute."*
11. Indeed, the Claimant had legitimate reasons to expect, in the absence of any dispute pending against him, the 1<sup>st</sup> and 2<sup>nd</sup> Respondent herein to issue him with the final nomination; not the Interested Party, upon the expiry of stipulated seven-day period for the position of the Member of County Assembly, Kajulu Ward, Kisumu East Constituency, Kisumu County having been declared the winner for the same.
12. For the reasons advanced above, this Tribunal is persuaded by the Claimant's arguments that the 1<sup>st</sup> Respondent went against its own party rules when it failed to issue the Claimant with the final nomination certificate but instead issued the same to the Interested Party who, in any case, lost to the Claimant. In other words, we find no justification in the actions of the 1<sup>st</sup> Respondent denying the Claimant the final nomination certificate and instead issuing the same to the Interested Party herein.

### **Orders**

13. In the premises, this Tribunal orders as follows:
- a) That the Claimant's case be and is hereby allowed.*

- b) *That the 1<sup>st</sup> and 2<sup>nd</sup> Respondents be and are hereby restrained from issuing the final nomination certificate to any other person for the position of the Member of County Assembly, Kajulu Ward, Kisumu East Constituency, Kisumu County, other than the Claimant.*
- c) *That, in the event that the 1<sup>st</sup> and 2<sup>nd</sup> Respondent have issued the final nomination certificate to the Interested Party or any another individual for the position of the Member of County Assembly, Kajulu Ward, Kisumu East Constituency, Kisumu County, other than the Claimant, the same is hereby declared null and void.*
- d) *That the 1<sup>st</sup> Respondent be and is hereby restrained from presenting the name of the Interested Party to the 3<sup>rd</sup> Respondent as the duly nominated Member of County Assembly, Kajulu Ward, Kisumu East Constituency, Kisumu County.*
- e) *That the 1<sup>st</sup> Respondent be and is hereby directed to issue the Claimant with the final nomination certificate for the position of the Member of County Assembly, Kajulu Ward, Kisumu East Constituency, Kisumu County within 12 hours of this judgment forthwith.*
- f) *The 1<sup>st</sup> Respondent be and is hereby ordered to bear for the Claimant's cost. Orders accordingly.*

DATED AT NAIROBI THIS 13<sup>TH</sup> DAY OF MAY 2017

Kyalo Mbobu (Chairman) .....

James Atema (Member).....

Hassan Abdi (Member).....