



REPUBLIC OF KENYA

IN THE POLITICAL PARTIES TRIBUNAL AT NAIROBI

COMPLAINT NO 279 OF 2017

SAMUEL KALII KIMINZA.....COMPLAINANT

VERSUS

JUBILEE PARTY.....1<sup>ST</sup> RESPONDENT

RACHAEL NYAMAI.....2<sup>ND</sup> RESPONDENT

**JUDGMENT**

*Introduction*

1. The complainant is an aspirant for member of National Assembly, Kitui South Constituency, Kitui County. By his complaint dated, 17<sup>th</sup> May, 2017 he alleges that the nominations were scheduled for 25<sup>th</sup> April, 2017; postponed to 30<sup>th</sup> April, 2017, but were never held. Instead, the day came and passed with only MCA ballots arriving in the constituency. His attempts to approach the party bore no fruit with his demand letter dated 4<sup>th</sup> May, 2017 eliciting no response.
2. He later realized that the 2<sup>nd</sup> Respondent had been given the nomination certificate without any nomination exercise having been conducted. He impugns the decision as having been made without fair hearing.
3. His earlier suit in *Complaint No 121 of 2017 Samuel Kalii Kiminza v Jubilee Party of Kenya & another* was dismissed on 9<sup>th</sup> May, 2017 for failure to invoke internal dispute resolution mechanisms. He consequently filed an appeal with the 1<sup>st</sup> Respondent's Appeal Tribunal on 10<sup>th</sup> May, 2017 seeking the resolution of the dispute but no response has been forthcoming.

4. He is apprehensive that the 1<sup>st</sup> Respondent is likely to issue a direct nomination certificate to the 2<sup>nd</sup> Respondent to his detriment, in breach of the party Constitution, and in violation of his right to a fair hearing.
5. He seeks appropriate reliefs from this Tribunal.

**1<sup>st</sup> Respondent's Case**

6. As a result he asks the Tribunal to order for repeat nominations. He also seeks an injunction restraining the 1<sup>st</sup> Respondent from awarding a nomination certificate to the 2<sup>nd</sup> Respondent.

**2<sup>nd</sup> Respondent's Case**

7. The 2<sup>nd</sup> Respondents filed an affidavit sworn by herself on 19<sup>th</sup> May, 2017. She avers that the Claimant herein has not lodged an appeal in the prescribed format or paid the prescribed fees with the party. She therefore avers that the Claimant has once more decided to ignore the internal dispute resolution mechanisms and therefore the Tribunal does not have jurisdiction to hear and determine this matter.
8. Additionally, she averred that the 1<sup>st</sup> Respondent has several lawful modes of selecting candidates to present to the electorate not limited to secret ballot, direct nomination or through consensus. In this regard, the 1<sup>st</sup> Respondent lawfully and properly relied on the provisions of Chapter XV of its Nomination Rules which provides:

**The party shall in areas of special interest where nominations cannot be conducted to issue direct nomination certificate to such candidate, or where there are more than one aspirant, by consensus or any other appropriate means agreed select one among them to be nominated**

9. She therefore contends that the 1<sup>st</sup> Respondent cannot be forced to repeat the nominations in Kitui South Constituency. What's more, the 1<sup>st</sup> Respondent has already issued her with a nomination certificate and presented her name to the IEBC as its nominee for Kitui South Constituency.
10. She prays for the complaint be dismissed with costs.

**Analysis**

11. We note that the 2<sup>nd</sup> Respondent admits that no competitive nominations were conducted in Kitui South Constituency. However, she argued that the 1<sup>st</sup> Respondent had the free hand to choose its candidates as it wishes including through secret ballot, direct nomination or through consensus. In this case, it had directly nominated her and presented her name to the IEBC.
12. In *Complaint No 192 of 2017 Charles O Okwemba v United Democratic Party* we held that this Tribunal will not, absent justifiable reasons, excuse a direct nomination where two or more candidates have been cleared to contest a party primary. We cited our earlier decision in *Complaint No 53 of 2017 Salah Yakub Farah v KANU National Elections Board & 2 others* where we had held as follows:

**In view of the above, we hold that the Claimant having been cleared by the party had a legitimate expectation that the party would conduct primaries where he would get a fair chance to compete. We find that the 3<sup>rd</sup> Respondent violated the Claimant's legitimate expectation that nominations would be conducted when it purported to undertake a direct nomination while there were at least two candidates for the position of Member of National Assembly, Fafi Constituency. Moreover, under Article 47(2) of the Constitution and section 4 of the Fair**

**Administrative Action Act, 2015 the party was expected to inform the Claimant of the party's decision not to conduct any nomination exercise in Fafi Constituency.**

13. We reiterate our decisions above and hold that the 1<sup>st</sup> Respondent could not lawfully undertake a direct nomination where there were two aspirants anticipating competitive nominations. The 1<sup>st</sup> Respondent's Article 11 requires it to:

**conduct free, fair, open and transparent nominations in national and county elections through the Independent Electoral and Boundaries Commission or other democratic method acceptable to the members under the supervision of the National Elections Board and the County Elections Board.**

14. The 2<sup>nd</sup> Respondent also referred us to Chapter XV of the 1<sup>st</sup> Respondent's Nomination Rules which permits the party, in areas of special interest, where nominations cannot be conducted and where there are more than one aspirant, by consensus, or any other appropriate means agreed, select one among the candidates. There is no evidence on record that Kitui South Constituency is an area of special interest, that nominations could not be conducted or that consensus, or other appropriate means agreed was used to select the 2<sup>nd</sup> Respondent. The 1<sup>st</sup> Respondent violated its own rules to the detriment of the Claimant and we so hold.

15. Concerning unilateral and arbitrary decisions by political parties, we held as follows in *Complaint No 251 of 2017 Elijah Omondi v Orange Democratic Movement & another* at para 9 and 10:

**We note that Article 91 of the Constitution, which establishes political parties as agencies of the democratic**

process, requires political parties to abide by the principles of good governance and democracy. They must also promote the principles and objects of the Constitution including the national values and principles of governance. We agree with the Claimant and hold that the current Constitution engenders a culture of justification in which every decision by a political party must be justified. The culture of justification demands that a political party must supply an affected person with the reasons for the party's decision. It is only by supplying reasons that it can be ascertained whether or not the decision is reasonable and justifiable in an open and democratic society.

16. We have found no evidence that the Claimant was ever informed of any of the reasons the Respondents have put forward as justification for failure to conduct party primaries. In *Complaint 170 of 2017 Harrison Mburu Gatumbi v Jubilee Party & 20 others* we held as follows:

The right to reasons is a constitutional right guaranteed in Article 47(2) and explicated by section 4(3) of the Fair Administrative Action Act, 2015. The Act requires that information on the nature of the administrative action together with prior and adequate reasons must be given to the person whose rights are affected. Reasons for decisions by political parties are not only a part of the principles of natural justice and fairness, but also enable an affected party member to know the possibility of and grounds for potential appeal to this Tribunal. Reasons also enable this

**Tribunal to have a better appreciation of the decision thus  
conduct a better appeal or review.**

17. We also take great exception to the fact that the 1<sup>st</sup> Respondent proceeded to take the complainant's nomination fees while aware that no primaries would be forthcoming. Having taken his application fees and not informed him otherwise, the Respondents created in the Claimant, a legitimate expectation that party primaries would be conducted. They violated that legitimate expectation by undertaking a direct nomination without informing the complainant of that decision.

**Reliefs**

18. In *Complaint No 48 John Mruttu v Thomas Ludindi Mwadeghu & 2 others* we held that in every matter over which we have jurisdiction, this Tribunal can grant any order that is just and equitable in accordance with section 11(1) of the Fair Administrative Action Act, 2015. The proper discharge of this Tribunal's mandate requires it to grant effective remedies, which means the most appropriate remedy in the circumstances of the case. We have found that the initial nominations were not free or fair and that the complainants' appeal was terminated in a manner that violated the right to be heard.
19. Accordingly, the justice of this case requires us to make the following orders:
- a) **A declaration be and is hereby issued to the effect that the 1<sup>st</sup> Respondent failed to conduct free and fair nominations for the position of member of National Assembly, Kitui South Constituency, Kitui County.**
  - b) **A declaration be and is hereby issued to the effect that the purported direct nomination as well as the certificate of nomination issued by the 1<sup>st</sup> Respondent to the 2<sup>nd</sup> Respondent, is null and void and of no effect in law**

- c) An order be and is hereby issued directing the 1<sup>st</sup> Respondent to organize and conduct a fresh nomination exercise for member of National Assembly, Kitui South Constituency, Kitui County within 96 hours from the publication of this judgment.
- d) The 1<sup>st</sup> Respondent shall bear the Claimant's costs of this complaint.

Dated at Nairobi this 19<sup>th</sup> day of May 2017

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**Kyalo Mbobu (Chairperson)**

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**James Atema (Member)**

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**Hassan Abdi (Member)**