



REPUBLIC OF KENYA
IN THE POLITICAL PARTIES DISPUTES TRIBUNAL AT NAIROBI
COMPLAINT NO. 71 OF 2017

SAMWEL ANDIWO OTIENO..... APPLICANT
CHARLES ODODA OPIYO.....2ND COMPLAINANT
-VERSUS-
ORANGE DEMOCRATIC MOVEMENT
PARTY OF KENYA..... CONTEMNOR/1ST RESPONDENT
WALTER WERE.....2ND RESPONDENT

RULING

Summary of the Complaint

1. The Notice of Motion application dated 23rd May 2017 seeks to commit the 1st Respondent to civil jail for contempt of the Tribunal's orders dated 7th May 2017. These Orders directed the 1st Respondent to revoke and/or cancel the nomination certificate issued to the 2nd Respondent and conduct a nomination exercise by ballot with immediate effect as at 7th May 2017 when the decision was delivered, in Kanyadoto Ward, Homa Bay County.
2. The Applicant has adduced an affidavit of service dated 24th May 2017 in support of his application. He averred that he served copies of the said Notice of Motion Application and Supporting Affidavit to a Clerk at the ODM party offices, which were stamped and signed in receipt for the 1st Respondent.

3. This Tribunal takes note that the 1st Respondent did not enter appearance in the hearing of this application.

Analysis

4. In consideration of the foregoing, this Tribunal takes note of its Orders dated 7th May 2017 and the possibility of disobedience of the same.
5. From the record before us, the Applicant averred that he served the Notice of Motion application and Supporting Affidavit to a clerk at the ODM party offices. However, the Applicant has not demonstrated that he served the Tribunal's orders upon an officer of the 1st Respondent capable of enforcing the said orders.
6. The Tribunal is aware that the determination as to whether there has been contempt of its orders is a key process towards, and that culminates in, punishment for contempt. The application, though attempting to show that there has been contempt, has failed to meet the standard. Had such contempt been shown then in line with the decision of Onguto J in *The Secretary General & Another v Hon Salah Yakub Farah* Election Petition Appeal No. 13 of 2017, the process for punishment would have to be effected as provided by law.

Orders

7. This Tribunal having found as above is therefore unable to grant the prayers sought by the application dated 23rd May 2017 as presented 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)