



REPUBLIC OF KENYA
POLITICAL PARTIES DISPUTES TRIBUNAL
COMPLAINT NO. 220 OF 2017

STEPHEN KIRIANKI NKANYAMACOMPLAINANT

-VERSUS-

ORANGE DEMOCRATIC PARTY OF KENYA.....1ST RESPONDENT

ABDIFATAH FARAH ADAN.....2ND RESPONDENT

JUDGMENT

Summary of the Complaint

[1] This Complaint concerns the Orange Democratic Movement (ODM) party nomination exercise for the position of Member for County Assembly, California Ward, Kamukunji Constituency held on 28th April 2017 where the Complainant was declared winner and issued a provisional nomination certificate dated 30th April 2017. The Complainant avers that despite his win, the final nomination certificate was issued to the 2nd Respondent. He submits in his statement of claim dated 10th May 2017 that he wrote to the party's County Appeals Tribunal (hereinafter referred to as the party's IDRDM) seeking for an amicable resolution of the dispute. The IDRDM declined to hear his dispute as it was not sitting at the time he filed his complaint. The Complainant is now before this Tribunal seeking inter alia for the Tribunal to compel the 1st Respondent to declare him as winner and issue him with the Final Nomination Certificate.

Response

[2] The 2nd Respondent in his Replying Affidavit dated 11th May 2017 avers that the Complainant was not qualified to participate in the nomination exercise and had requested the party to bar his participation. Nonetheless, the Complainant participated in the exercise. He further argues that the Complainant did not canvass his dispute before the party's IDRDM despite having ample opportunity to do so and therefore this Tribunal does not have jurisdiction over this matter. He contends that the Complainant's provisional nomination certificate is a forgery and cannot be relied upon. Further, that he won the nomination exercise fairly and that his provisional and final nomination certificate are both reliable and authentic.

Issues for Determination

[3] The sole issue for determination is *whether the Complainant should be issued the final nomination certificate by the 1st Respondent for the position of Member of County Assembly, California Ward, Kamukunji Constituency.*

Analysis

[4] From the record before us, it is clear that the Complainant attempted to canvass his dispute before the party's IDRDM. We refer to the two letters dated 7th May 2017 and 9th May 2017 addressed to the party's IDRDM and stamped received by the latter. As provided for by section 40(2) of the Political Parties Act No. 11 of 2017, we are satisfied that the Tribunal is properly seized of the matter.

[5] The Complainant has submitted two documents for consideration before us. He has adduced a provisional nomination certificate dated 30th April 2017 in his favour signed by one Mwanje Ayodi as the Returning Officer for Kamukunji Constituency. He has further produced a document (Annexure SKN-2) which he alleges is a copy of the results of all Members of County Assembly aspirants in California Ward.

[6] In response, the 2nd Respondent has also adduced a provisional nomination certificate dated 30th April 2017 in his favour signed by one Newton Mwanje as the Returning Officer for Kamukunji Constituency. He has further produced a nomination certificate dated 3rd May 2017 signed by the Executive Director, Chairperson & Secretary of the ODM National Elections Board.

[7] From the foregoing, the Tribunal could not establish if the two provisional certificates were signed by the same person. It is worth noting that the signatures in the two documents, differ significantly.

[8] The Tribunal is inclined to find in favour of the 2nd Respondent for the following reasons:

- a) The National Elections Board ignored the Complainant's Provisional Nominations Certificate even though it received it on 1st May 2017;
- b) The National Elections Board acted on the 2nd Respondent's Provisional Nomination Certificate which it received a day later. This suggests that is considered this certificate as both credible and authentic;
- c) The National Elections Board is higher in the ODM hierarchy than the Returning Officer and so its decision is more reliable and likely to be credible.

Orders

Accordingly, the Complainant's Notice of Motion dated 10th May 2017 is hereby dismissed with no order as to costs.

DATED and DELIVERED AT NAIROBI this 11TH DAY of MAY 2017

1. M. O. Lwanga (Presiding Member)

2. Paul Ngotho (Member)..... ..

3. Dr. Adelaide Mbithi (Member)